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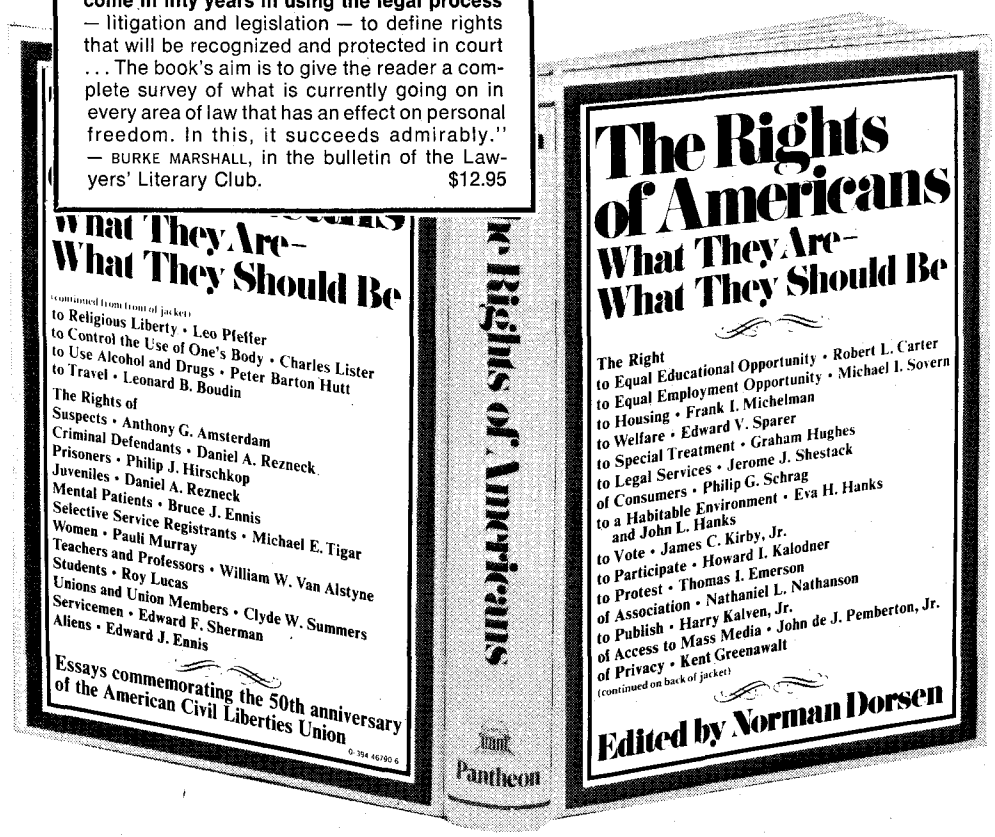

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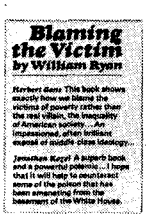

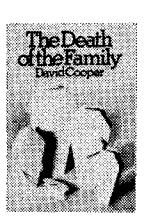

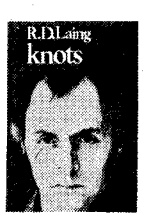

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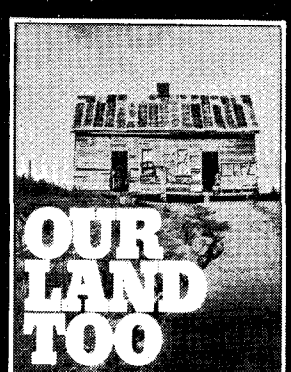

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Fusty Economics

President Nixon started his Administration with an economic game plan that didn't work and had to be junked. Then he suddenly made the announcement that he was a "Keynesian," which astonished some as much as though the Hanoverian succession had embraced Catholicism. That was Game Plan II – and it hasn't worked either. Mr. Nixon embraced Keynes just when Keynesianism was going out of date – at least for the problems that beset America.

At his first press conference, seven days after he took office, Mr. Nixon abandoned, abruptly and arbitrarily, the presidential role of guiding wages and prices. It is called "jaw-boning," or "incomes policy." Mr. Nixon proudly said he was a supporter of a free market economy – letting competition set reasonable wages and prices.

The free market economy – laissez-faire – was outlined by good old Adam Smith in 1776 and it worked fine till they invented General Motors and the United Steel Workers union. Today maybe 40 percent of prices are controlled. The free market got Mr. Nixon's theological support at a time when it no longer existed. As professor Robert Lekachman said, "Mr. Nixon has attached himself to an economic policy which was quite up-to-date two or three decades ago."

Well, inflation got worse and unemployment got worse. No wonder! Mr. Nixon had notified big business and big labor that the lid was off.

He set out to depress the economy and let the "free market" cure things. You would have thought he would have known about "administered prices from the Berle-Means classic of 1932. Dr. Gardiner C. Means, a co-author, who is still going strong 40 years later, told the Joint Economic Committee the other day, "The Nixon Game Plan is aimed at a type of inflation which had already passed when it was made public."

Events slowly pushed Mr. Nixon back into an activist economic role, kicking all the way. He rapped the knuckles (gently) of Bethlehem Steel and got them to give up half of a proposed 12 percent price increase. He is now trying to jockey the hard-hat construction workers into reason under threat of dealing with lower-paid nonunion groups on government projects – no mean clout since government accounts for one-third of the nation's building.

Mr. Nixon doesn't have a better friend in the economic world than Arthur Burns, the man he made chairman of the Federal Reserve System. Back in 1960 Burns warned the Vice President that a slump was coming that might defeat him unless Ike acted. Ike wouldn't act. As Mr. Nixon sadly says in his *Six Crises*, jobless rolls increased 452,000 in October 1960, and all the campaigning he did "could not counteract that one hard fact."

Every statement Burns makes today signals to Mr. Nixon that he ought to act. I have a copy of five formal talks in front of me, 1970-1971. I heard Burns deliver most of them. Contrary to Nixon's economic advisers at the White House, of whom George Shultz is top, Burns insists there is plenty of money available. Speaking slowly and emphatically on March 10 he testified, "We face a problem unknown to earlier generations – namely, a high rate of inflation at a time of substantial unemployment." Not merely Burns but the whole Reserve Board, he reported later (March 31), favor "a multi-faceted incomes policy" including a Wage-Price Review Board. What is that in English? – he wants the President to step in, knock heads together, "mobilize public opinion" (Burns' words), maybe scream a little (mine). And finally, perhaps, cut taxes.

Burns is a conservative economist and liberals don't always go along with him, but he knows as much about the business cycle as any man in America and he points out the funny situation the economy is now in. It's on a hairline. Conventional fiscal and monetary remedies are doing some good – not enough. Recovery is probably on the way, but so slow. There's plenty of cash and credit, Burns insists, but the consumer is holding back. Why? This column has mentioned the circumstances before, and Burns reemphasizes them. The consumer is cautious because he's scared. He's scared of inflation; he's scared of unemployment; he isn't buying that new color TV because he's trying to stretch today's income to cover tomorrow's higher costs. Or, to put it in Burns' economic jargon: "he has cut down his current rate of spending and is accumulating liquid assets." (March 10 testimony to the Senate Banking Committee.)

Why bring this up now? Other events are thundering through Washington. America's top icon, J. Edgar Hoover, we firmly believe, is on his way out. You can practically feel the Vietnam war coming to an end! Why then, at a time like this, talk about fusty economics? Because a quarter of America's plant capacity is idle; because the gap between actual and potential US production is now $60 billion; because there's six percent unemployment – and because it's largely unnecessary. Restore consumer confidence and we might well have a quite spectacular recovery by year-end.

Dr. Burns deserves well of America. In June 1970, the US was on the brink of a liquidity crisis; an old-fashioned "money panic." The stock market had made a sickening, two-year drop. The Administration's planned recession was taking hold. Mr. Nixon had just horrified the nation with Cambodia. Brokerage houses were failing. The wildest rumors circulated (one: Chrysler was going down, but you could substitute your own choice). Then on the weekend of June 20-21 the Fed learned that the tottering Penn Central would finally collapse.

In one of the most romantic stories of modern banking – a story that hasn't been published before – Burns and his board worked 48 hours to tell big banks across America that on Monday the "discount window would be kept open," and followed it next day with a suspension of ceilings on large certificates of deposit – the technical equivalent of a slug of whiskey to a heart patient. The danger of a wave of fear passed. The result without this secret effort? We don't know. Some of Washington's biggest stories are things that don't happen.

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What Nixon Didn't Say

There wasn't much meat in that warmed-over stew the President served up over television last week. But if you stir it carefully, looking not for what it had but for what it didn't, the dish becomes more interesting, though no more palatable. It probably ends any hope of getting Thieu and Ky to negotiate with the other side. Without American guns behind him, Thieu would have had to make some concessions and prepare to negotiate seriously, or at least open the forthcoming September elections to the Vietcong and possibly plan for a coalition government. In the absence of a definite US withdrawal date, potential peace candidates will have little to run on.

What else? Well, the President told us why we're fighting in Vietnam: "Only for the right of people far away to choose the kind of government they want." So we ought to be liberating Greeks, East Bengalis, Haitians and other suppressed and far away peoples too numerous to mention. But that, of course, is ridiculous. So is the President's statement. For we have no divine or devilish right to determine what rights others shall have. The speech abounds in self-righteous claims; for instance, our incursion into Cambodia did not widen the war. Then why is there so much fighting there today, when there was almost none a year ago? And in what way did Laos show that the South Vietnamese "could fight effectively against the best troops that North Vietnam could put in the field "? If it's true, why did they beat such a quick retreat, and why didn't they do what they set out to do (cut the Ho Chi Minh trail) and would they have gone in in the first place, or been able to get out at all, without massive US air support?

"Vietnamization has succeeded." That's what he said. In fact, South Vietnam's economy has shown the same weaknesses as ARVN. Inflation and corruption go forward hand in hand. Succeeded? Then what's keeping us there? And where, we ask, is that "indication as to the end of the tunnel," which Mr. Nixon on March 22 promised to give us? Be patient, he says. He cannot yet set a date for disengagement because if he does we will not "come out of this searing experience with a measure of pride in our nation." Pride in body counts, pride in PX scandals, pride in defoliation, pride in having dropped more bombs on battered Indochina than were dropped on Germany during the Second World War, pride in the venality of our

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Asian clients, pride in having sustained a dictatorial regime in Saigon? No, he cannot set a date, because that would "serve the enemy's purpose and not our own." Does it not also serve the enemy's purpose to say that "American involvement in this war is coming to an end"? For is that not a signal that the enemy need only recoup its strength and wait until we're gone? No, because by then the South Vietnamese can win the war on their own. Anyway, we can't set a withdrawal date, because we would be throwing away "our principal bargaining counter to win the release of American prisoners of war," and in addition we would be making it easier for the enemy to "marshal their attacks against our remaining forces at their most vulnerable time." What, then, is the meaning of assurances given last week in Paris to Senator Hartke by the Hanoi and Vietcong delegations that if an "acceptable date" for total, unconditional withdrawal were set (such as the end of this year), they would move speedily to release all POWs and would negotiate a cease-fire to guarantee the safe withdrawal of US forces, and why did they remind Hartke that the POW question had been settled "within three weeks" in 1954, once France announced it was getting out of Indochina? These are not new offers but variations on proposals put forward before.

Finally, the President says that too rapid a withdrawal would plunge this nation into a "nightmare of recrimination." But how are we to avoid recriminations? Something tragic and dishonorable has happened. We have fought an ugly, unnecessary war. We are in need of a searching, national self-examination that may help us discover where we went wrong, where responsibility lies. What nonsense it is to assert that "never in history have men fought for less selfish motives." Does purity of motive assure the virtue or prudence of one's acts?

It is probably true, given Calley and all, that "we don't hear enough of the tens of thousands of individual American soldiers who have built schools, roads, hospitals, clinics, and who through countless acts of generosity and kindness have tried to help the people of South Vietnam." All honor to the troops. But couldn't the Peace Corps do it, or the Boy Scouts, and wouldn't our fighting men, not to mention the Vietnamese be better off for the substitution? Bringing home 100,000 more of our troops by December 1 of this year will leave approximately 180,000 in South Vietnam 11 months before the '72 election. What is the task of that "residual" force? Is it there only to defend itself? Will the Air Force still be bombing from Thailand? Will our ships still be shelling from the seas? Will the US be subsidizing Thieu and Ky and equipping and training his forces? Yes, "American involvement in this war is coming to an end." All things finally come to an end, fortunately, including one man's occupancy of the White House.

20-20 Hindsight

The new Hubert Humphrey was on display in the old Senate Office Building last week, addressing 100 Georgetown University undergraduates. Earlier the same morning, while Senator Proxmire had talked with the students, Dr. Edgar Berman and other Humphrey operatives surveyed the audience carefully. They needn't have bothered. These were polite, well-scrubbed freshmen, no slogan chanters, and when Humphrey eventually related the agony of his Indochina passion, they accepted it as gospel.

The senator stayed an hour and a quarter, opening with a 30-minute discourse in which he quoted Jefferson and spoke of pollution, center cities, social mobility, the war on poverty, racism, spiritual poverty, the Soviet Union, playgrounds in the District of Columbia ("I was the one who got lights for them"), ending with a quote from "the beloved Pope Paul."

But Mr. Humphrey clearly wanted to talk about the war. For a while the only questions were about Lt. Calley's conviction. He dismissed that subject with the observation that "war is exactly what Sherman said it was; men under strain do things they shouldn't." Finally, however, the senator got his opening. "I'm one of those who spoke up [in the Senate last month] for total disengagement," he began. "I recognize it's a change of position and I'm proud of it. In the two years I was out of office I saw things a great deal differently than when I was in. But I had the courage to change my mind." Actually, he "came to the conclusion in the latter part of '67 and indeed in '68 that we had to have an ending to this war" – something that comes as news to those who were listening to him at the time, either in public or private. In the spring of 1967, meeting with friends and well-wishers, the Vice President had stoutly defended the entire Johnson policy, with one minor reservation: he thought, on balance, that it would be wise to stop the bombing of the North. And on that point, he subsequently reversed himself publicly.

During the last week of October 1967, in Saigon as the President's representative to the inauguration of the Thieu-Ky government, Mr. Humphrey had said: "If the American people unite in determination to see this struggle through without complaint, we will shorten this war. I think we are winning this struggle. I don't say it is won, but we are winning it in terms of politics, militarily and economically." Millions of Americans, "like myself," he then told the South Vietnamese leaders, "are confident you will persevere in the face of aggression and subversion."

Last week the new Humphrey observed: "I was part of the government that carried on this war. . . . I wasn't influential but I had some responsibility. Now I didn't make any decisions on the war. The only time I got close to it was when the President was in

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the hospital," when Humphrey saw the Secretaries of State and Defense daily. "Usually," he added, "I had trouble finding them. The Vice President has very little authority of course; but I'm not trying to exonerate myself. At the time we went in it was necessary – morally. Our purpose was to prevent aggression." Somewhere along the line, the new Humphrey suggests, that purpose got a little vague. For example, he told the Georgetown students how the Johnson Administration had originally intended that tear gas be used "for humane purposes" of flushing Vietcong out of caves, as an alternative to bombing them. But then "the military got out of hand" and started shooting howitzers full of the stuff and dropping it from planes. He continued: "When you see what we've done in the name of defoliation, you devastate the whole countryside; it's unbelievable. Recently I saw these pictures . . ." and his voice trailed off. Just how it was that he missed the defoliation when as Vice President he flew over the war zone by helicopter (or, at home on the six o'clock news) wasn't explained.

It seems that the military was frequently getting out of hand during the Johnson Administration, in Humphrey's current view, seeking constantly to widen the war and increase American manpower. But LBJ nonetheless "resisted going into Cambodia and Laos."

In the new Humphrey's version of history, at some point during his Vice Presidency he apparently began to regard himself as an apostle of peace. It was a well-kept secret in Washington at that time. "I went to the students and brought their message back, though frequently it wasn't heeded" in the White House, the senator revealed last week. "My most difficult moments related to the war." But not so difficult that he could not assure the Western states Democratic conference in August 1967: "I could not support the policy if I thought it were wrong. I could not go out talking to people, mothers and fathers, supporting a national position, doing it openly, actively, a position that required the lives of our sons if I thought it were wrong."

By the Democratic convention, Humphrey says, he was more than ready to publicly call for American disengagement in Indochina. This time, however, events intervened – presumably the reason Humphrey declined to endorse the moderate peace plank which his supporters defeated in Chicago, and why the Vice President told anguished friends in private, after nomination, that he could not break with the Johnson policies. Nonetheless, "in that month I was trying and I wanted many times to speak more forcefully. But each time I knew that our President was entering into private negotiations with the other side. That's the God's truth. How would you like to be put in that jam? . . . I had two months to run and during one month, serious, delicate negotiations were going on. The President told me: 'Mr. Vice President, if you want to make a speech for political purposes you can; but there is a chance we might get this war slowed down if you don't make that speech'."

"It was," said Humphrey, "the most difficult political decision of my life." But he made it; he kept mum.

It is uncharitable to recall the record of Hubert Humphrey, and do no more, for although he is a newsworthy example of 20-20 hindsight, he is not unique. There is George Ball, number two man in the State Department under Presidents Kennedy and Johnson and former US Ambassador to the United Nations. Mr. Ball was one of the Administration officials who raked Senator Robert Kennedy over the coals in February 1966, for having suggested that the NLF be "admitted to a share of power and responsibility" in some future South Vietnamese government, as part of a negotiated settlement. Kennedy's suggestion, Ball then said, would mean that "the hard core elements trained in subversion would move in with people politically who played no part in the present government, and what we would have would only, in a very short time, be a Communist government in Saigon." Later that year, Mr. Ball justified US bombings of fuel depots in the North, because they "should speed the move to the conference table." It was Mr. Ball who told NATO officials in Paris in 1965 that since the North Vietnamese had given no indication of willingness to negotiate, any question of peace talks was "academic." And it was Mr. Ball who said in a speech to Northwestern University alumni in 1966 that the war is "one further chapter in the long and brutal chronicle of Communist efforts to extend the periphery of Communist power by force and terror," and that "this point is at the heart of our determination to stay the course in the bloody contest now underway in South Vietnam," and that "to succeed in that struggle, we must resist every Communist effort to destroy by aggression the boundaries and demarcation lines established by the post-war arrangements." And it was Mr. Ball, speaking to Stanford students this month, who said that he "was the lone dissenting voice on Vietnam," and that "I still say, as I have all along, we should cut our losses and get out – right now."

Bangla-Desh

East and West Pakistan, incompatible for the past 24 years, have split, and the parting appears irrevocable. The two have had little in common, except the Muslim faith. East is separated from West by more than a thousand miles; they speak different languages, have different cultures and economies. The West has always been the dominant and dominating partner. Thus although 60 percent of all Pakistanis live in the East, their share of private investment and of government development expenditures has averaged about

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25 percent. Products from East Pakistan – principally jute, hides and skin – have been responsible for 50 to 70 percent of Pakistan's export earnings; yet the East's share of foreign imports has remained between 25 and 30 percent. Per capita income in the West was 32 percent higher than in the East 10 years ago, 61 percent higher last year.

Until the central government cracked down on March 25, hoping swiftly to stamp out the movement for autonomy, the East Pakistanis were not demanding independence, but a loose union with the West. The ensuing violence (an estimated 15,000 killed the first three days) put an end to hopes for fruitful negotiations and has united East Pakistanis behind full sovereignty. (That the Pakistan central government had made up its mind to crush dissident elements in East Pakistan long before it went through the motions of negotiating some compromise is suggested by the fact that in mid-February, a month before it turned loose 60,000 military on the unarmed East Pakistanis, Karachi requested AID in Washington to divert a PL-480 shipment of food destined for East Pakistan to West Pakistan. AID complied.)

Most informed opinion holds that Karachi cannot for long hold East Pakistan captive. It will have to release its grip, and a new state of Bangla-Desh will come into existence. As of this writing the West Pakistanis (largely with American weapons) have nominal control of the cities, but not the countryside.

The question is not whether Karachi will pull back its troops, but when, and how long will the violence and terrorism go on. Part of the answer to that question lies in Washington. Because Karachi has persuaded successive Administrations that it was a needed and true bulwark against the Communist Chinese, it was supplied with between $1.5 billion and $2 billion in US military aid from 1954 to 1965, at which time an embargo was placed on further deliveries to Pakistan, as well as India. In 1967, however, shipments of small parts were resumed, and last October the Nixon Administration offered to supply Pakistan with four maritime reconnaissance planes, six F-104 jet fighters and seven B-57 bombers.

The Pakistan government is on the verge of bankruptcy, having drawn on its foreign reserves at an alarming rate for the past year. It has a foreign indebtedness of approximately $4 billion and will need additional foreign resources to keep going. Ordinarily, it would arrange with the World Bank to reschedule repayment on this debt, but the Bank is under no obligation to do this and probably won't soon.

So far, the attitude of the Nixon Administration toward the East Pakistani struggle for independence has been well concealed. If it had a policy, it did not reveal it during the first two weeks of the fighting. The Soviet government, on the other hand, though it too has made aid available to Pakistan, promptly urged Karachi "to take most immediate measures so as to put an end to bloodshed and repression against the population of East Pakistan. . . ." At the least, the US ought to inform Pakistan that no further aid, military or economic, can be expected.

Coddled Criminal

"How shocking it is if so many people across the nation have failed to see the moral issue which was involved in the trial of Lt. Calley – that it is unlawful for an American soldier to summarily execute unarmed and unresisting men, women, children and babies. But how much more appalling it is to see so many political leaders of the nation who have failed to see the moral issue, or having seen it, to compromise it for political motive in the face of apparent public displeasure with the verdict" – letter to the President from Capt. Aubrey M. Daniel III.

The President's interventions in the Calley case may prove his worst blunder since his nomination of G. Harrold Carswell to the Supreme Court. He moved in initially to order Calley's confinement to quarters, rather than the stockade, and that compromise is a curious one indeed.

Calley has the run of his apartment, but with a round-the-clock unarmed stockade guard. He has all the comforts of home, but all his liquor was removed – stockade prisoners can't drink. His own telephone was disconnected, but he is free to receive calls over a monitored military line from a select list of friends. Those same friends may visit the lieutenant, but only from one to five p.m. Sundays, the normal stockade visiting hours. The commander of the Ft. Benning stockade likes to consider Calley his man; yet in the true sense Calley is Nixon's man.

Calley's official status is still that of an "officer prisoner," and every day at home counts against his life sentence. His real status, however, is that of national political football. The governor of Alabama was only a little slower than the President in recognizing what a package of political dynamite was smoldering at his very doorstep when he swooped down in a six-car caravan with full military escort to visit the lieutenant, only four days after his conviction. The cameras dutifully whirred. Full colonels who only a day before officiously defined the restrictions on Calley's visitor list joined the spectacle of one celebrity calling upon another with undignified sprints across the street to shake George Wallace's hand. They seemed to have forgotten Wallace is but an elected state official and Calley a murderer.

Then, on April 2, Mr. Nixon again intervened, this time to announce through his aides that "before any final sentence is carried out . . . the President will

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personally review the case and finally decide it." It was noted that "the Code of Military Justice does not provide for any appeal to the President of the United States, nor for any mandatory review by the President . . . in a case of this kind, in view of the fact that no death sentence was imposed." The White House intervention was "not strictly legal in nature." However, since the case had "captured the interest of the American people," and since "even people who are known to have been critical of the war effort are in the forefront of those who felt this was not a proper verdict," the President chose to assert his "inherent powers as Commander-in-Chief." It could not be predicted what nonlegal considerations would be involved; "this is sort of in the heart of a man."

President Nixon has boxed himself politically. He can send the boy back to jail, but only by in effect reneging on the impression of clemency that he has panderingly created. His legal advisers will lose sleep writing a press release for that one. By responding as he did, in the dead of night he said, the President has prejudiced the appeals process, not to mention the courts-martial of Capt. Ernest Medina and Col. Oran K. Henderson. To openly pardon Calley would be to vindicate what amounts to mob action in the form of letters and telegrams. Suppose a corresponding proportion of the population of the United States had called upon the President to "Free the Chicago Seven"? Surely he would have responded that due process must be respected, that grand jury and judge were acting from better knowledge and time-honored wisdom than anyone else could. Calley's jury appears to have worked with exemplary objectivity, belief in innocence until proved otherwise, and hermetic isolation from popular influence. Observers at Ft. Benning call it one of the fairest-run trials ever held anywhere. Thus, depending upon which is uppermost in Nixon's mind (the 1972 election or the tradition of trial by jury), the President of the United States will either free the young man, or call upon him to serve a few symbolic years at Ft. Leavenworth, Kansas. Whichever he decides, he will hope that the decision gets the monkey off his back, just as the top brass must have hoped that trying Calley and a few other lower-rank officers would get the monkey off theirs.

Berkeley Votes

Two years ago at a Huey P. Newton birthday rally in the Berkeley Community Auditorium, Tom Hayden waved a rifle in the air and exhorted white radicals to discipline themselves for violent seizure of power. Last week in the same California auditorium, Hayden squatted in a front aisle carefully following the municipal election returns as they were projected on a screen by Berkeley officials. The contrast reflects growing disaffection within the left for confrontations and bombings, and a corresponding surge of enthusiasm for electoral politics.

The shift has been building in Berkeley for about two years. In 1969, a coalition of old line white leftists and student radicals nearly put their candidate on the City Council. Last year the white radicals teamed up with progressive blacks to elect Ron Dellums to Congress and Ken Meade, a young white attorney, to the State Assembly. This year the left threw its energies behind enactment of a city charter amendment subjecting the police department to "community control," and the installation of a radical majority on the City Council. Student involvement in the campaign, at a time when the Berkeley campus was otherwise quiet, was intense. Youthful activists pounded the pavements and the precincts; more than 10,000 new voters were registered, the majority of them students and "street people." On election day last week, almost 80 percent of the registered voters turned out – an unprecedented number for a city election. In the end it was the radicals' political savvy, as much as their enthusiasm, that paid off: while moderate conservative factions put up 29 candidates for the four vacant council seats, thus hopelessly dividing their strength, the radicals coalesced around a slate of two whites and two blacks. Though no single candidate received an absolute majority and the community control of police proposition lost badly, the radical coalition picked up three of the four vacant council seats and helped elect a sympathetic black mayor, Warren Widener, by a slim 50 vote margin.

The blossoming preference for Allende's tactics as opposed to Che's does not mean that the left is less committed to far-reaching change. It means there's a growing realization that the radicals' basic problem is not the electoral system itself, but the lack of popular leftist majorities, and that in order to build majorities the movement must do more than attack the establishment; it must demonstrate, by taking power in selective localities, that it is capable of creating viable alternative institutions. Last week's election in Berkeley did not immediately accomplish this: the City Council is deadlocked, four to four, between moderates and leftists, and few major reforms can be enacted. But two years hence the radicals may well gain a working majority and push through such innovations as free city-run day-care centers, a graduated city income tax to replace the property tax, and a police department less hostile to the life styles of blacks and young whites. That is one possibility. Another is that the more impatient revolutionaries may soon grow disillusioned with their newly elected city officeholders, none of whom resembles Lenin at the Finland station. The Berkeley left might then drift back to apathy, factionalism and violence.

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White on White

Privacy and the "Third-Party Bug"

by Nathan Lewin

Back in December 1965, when James White of Chicago let Harvey Jackson into his home thinking that Jackson was buying heroin from him, neither of them would remotely have imagined that their sordid and petty transaction would, more than five years later, be the subject of emotional dissertations on privacy by Justices Douglas and Harlan of the Supreme Court.

What Mr. White did not know was that Mr. Jackson was acting as an informer for agents of the Federal Bureau of Narcotics and that strapped to Jackson's body was a "radio kel set" – a transistorized device which transmits sound to a radio receiver nearby. Listening to their conversation on the radio in a car parked near White's home was Agent DeFauw of the Bureau of Narcotics. White had visited Jackson in Jackson's home twice during the preceding week, and each time a narcotics agent (also, coincidentally, named Jackson) had been hidden, with the informer's permission, in a kitchen closet where he could hear what was being said and could peek out to see what White and Jackson were doing. Here again, Jackson had the kel set attached to him, so that the hidden agent was not the only one able to hear; Agent DeFauw was listening in on his car radio receiver.

White and Jackson had more meetings in December 1965 and early January 1966. Nearly all were overheard by Agent DeFauw because of the radio transmitter Jackson was wearing. Some of the meetings took place in Jackson's car or in his kitchen, others on street corners, and one meeting – at which, after several substantial "buys" of heroin, White told Jackson that the price of heroin was going up – was arranged at White's place of business, a Chicago restaurant. Finally, after about five thousand dollars and several packages of heroin had changed hands during eight meetings between White and Jackson, Agent DeFauw arrested White on a street corner as he was receiving a briefcase containing heroin from another accomplice.

Having done his work for the Narcotics Bureau, informer Jackson apparently disappeared, and the prosecutor could not find him to testify at White's trial. As a result, the critical evidence was given by the agents who had overheard the conversations on the radio receiver. White's lawyers objected to Agent DeFauw's testimony on the ground that the radio transmission was nothing less than a "bug" placed in the various locations where White and Jackson had had their meetings. They argued that the conversations could not constitutionally be overheard unless the agents had obtained the equivalent of a search warrant, which they had admittedly not done. The objections were overruled, and White – who was a second-time narcotics offender – was found guilty and sentenced to 25 years in jail and a $35,000 fine.

Since his conviction, White's case has received four full-scale appellate hearings. It was first argued to a three-judge panel of the United States Court of Appeals sitting in Chicago, which decided, by a two-to-one vote, that the radio transmission was an unconstitutional eavesdrop. Thereafter, the full Court of Appeals (eight active judges and one retired judge) reheard the case and again decided, six-to-three, in favor of White. On the government's request for Supreme Court review, the case was argued in November of 1969, when the Court had only eight Justices. There was, apparently, an even division, because rather than deciding the case in the 1969 term, the Court set it down for reargument in 1970. And it was finally decided – against Mr. White – by a five-to-four vote on April 5.

An understanding of the constitutional issue and its importance calls for a little background. The Fourth Amendment guarantees that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," and it prohibits the issuance of search warrants on anything less than "probable cause, supported by oath or affirmation." In a now infamous 1928 decision (*Olmstead* v. *United States*, 277 U.S. 438), the Supreme Court held – over classic dissents by Justices Brandeis and Holmes (with Justice Stone and even Pierce Butler joining the dissenters) – that a telephone wiretap was not an unconstitutional search or seizure because no tangible thing had been seized and no private house or enclosure had been searched or physically invaded. (Wiretap evidence was ruled impermissible in later cases not because it was unconstitutionally obtained, but because its disclosure violated the Federal Communications Act.) For the next

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30 years, the Supreme Court consistently followed the rule that the Fourth Amendment protected only tangible property. In 1960 it finally recognized that conversations could be "seized" but ruled that they would be excluded only if heard as the result of some unlawful invasion of a private location. The key word became "trespass," and the question in each case was whether the overhearing device or "bug" had been installed with or without "trespass" or "physical penetration." This meant, of course, that the most sophisticated listening devices – those that carried sound on beams of light or that otherwise avoided physical penetration into the room where the conversation was taking place – were constitutionally permissible.

In December 1969, the Court threw over the *Olmstead* precedent. In a case concerning a listening device placed on the outside of a public telephone booth regularly used by a suspected professional gambler (*Katz* v. *United States*, 389 U.S. 347), the Court held that the act of "electronically listening to and recording" the words used by a suspect "violated the privacy upon which he justifiably relied while using the telephone booth," and it rejected as of "no constitutional significance" the fact that the device which had been used "did not happen to penetrate the wall of the booth." Squarely repudiating *Olmstead*, the Court said that "the Fourth Amendment protects people – and not simply 'areas.'" It then applied a rule which it had just recently held appropriate as to wiretapping, and said that electronic surveillance of conversations protected by the Fourth Amendment should thereafter be permitted only when and if a judicial authorization – in the form of a warrant issued as the Fourth Amendment requires ("on probable cause, supported by oath or affirmation") – is first obtained.

The majorities of the three-judge and nine-judge panels of the Court of Appeals which considered White's case thought that this Supreme Court decision – issued shortly before the first argument in the appellate court – required a finding that the radio transmission overheard by Agent DeFauw was unconstitutional. They reasoned that White had "justifiably expected his conversations to be private" and that the government had made its "well-laid plans" precisely "because they recognized that the defendant sought to exclude their uninvited ears."

There is, of course, an important distinction between White's case and the usual instance of government eavesdropping (which includes the *Katz* situation), and this distinction did not escape the dissenters in the Court of Appeals or most of the Justices in the Supreme Court. Ordinarily, a "bug" is used to overhear what is being said among people who do not want their conversations overheard and none of whom is about to report his discussions to the authorities. The presence of the "bug" is, in other words, unknown to all the speakers and visible listeners, and its effectiveness is usually dependent on its continued secrecy. When the government eavesdrops on such a conversation, it is infringing on the privacy which all the participants believe surrounds what they are saying.

The situation is at least somewhat different when one of the people engaged in the conversation is really not what he seems – when he is, for example, an informer or otherwise cooperative with the authorities. Jimmy Hoffa was convicted of jury tampering largely on the testimony of someone he believed to be a good friend, who was really reporting regularly to federal officials about Hoffa's efforts to bribe the jury. Hoffa claimed, on appeal to the Supreme Court from his conviction, that the pretended friend was a "walking bug," and that testimony of statements Hoffa made in his hotel room in the presence of his trusted colleague should have been excluded as unconstitutionally obtained. None of the Justices other than Earl Warren accepted this argument. They said that the Fourth Amendment does not protect "a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it."

And so to Mr. White. The *Hoffa* rule plainly meant that informer Jackson, if he had been available, could have testified to what White said to him. The critical question was whether Jackson, who was a participant in these conversations and was acting for the government, could smuggle in other uninvited listeners by having the conversations transmitted by radio to Agent DeFauw and his friends. More precisely, it was whether the narcotics agents could use such an electronic device without first establishing to the satisfaction of a judge or magistrate that there was "probable cause" to believe that White was engaged in illegal activity.

This is where a broad philosophical question concerning the nature of our society has to be confronted. Justice Harlan, who is usually sympathetic to police needs, framed the issue in the *White* case as whether "uncontrolled consensual surveillance in an electronic age is a tolerable technique of law enforcement, given the values and goals of our political system." He concluded that if government agents were free to engage in "third-party bugging" without first obtaining judicial authorization, the fear of this practice would "undermine that confidence and sense of security in dealing with one another that is characteristic of individual relationships between citizens in a free society." It seems difficult to disagree with his proposition "that words would be measured a good deal more carefully and communication inhibited if one expected his con-

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versations were being transmitted and transcribed." Or with his prediction that such "consensual transmittals," if prevalent, "might well smother that spontaneity – reflected in frivolous, impetuous, sacrilegious, and defiant discourse – that liberates daily life."

Justice Douglas – more often given to philosophical musing – expressed similar views on the issue presented in the *White* case: "Monitoring, if prevalent, certainly kills free discourse and spontaneous utterances. Free discourse – a First Amendment value – may be frivolous or serious, humble or defiant, reactionary or revolutionary, profane or in good taste; but it is not free if there is surveillance . . . The individual must keep some facts concerning his thoughts within a small zone of people. At the same time he must be free to pour out his woes or inspirations or dreams to others. He remains the sole judge as to what must be said and what must remain unspoken."

In short opinions, Justices Brennan and Marshall also noted that they would permit the kind of electronic surveillance conducted in White's case only upon prior approval by a judicial officer and the issuance of a warrant. Justice Black, on the other hand, who had dissented in the *Katz* case and continues to subscribe to the view that conversations cannot be "seized" in the Fourth Amendment sense, briefly noted that he considered the radio transmittal evidence admissible.

The decisive opinion in White's case was written, coincidentally enough, by Justice White, and joined by Chief Justice Burger and Justices Stewart and Blackmun. It agreed that anyone planning illegal activities might worry that his companions are reporting to the police, and that this concern might affect what he says to them. But, Justice White said, "we are unpersuaded that he would distinguish between probable informers on the one hand and probable informers with transmitters on the other." Adverting plainly to the Harlan-Douglas thesis that free discourse will be smothered by uncontrolled consensual surveillance, the plurality opinion concluded that "it is only speculation to assert that the defendant's utterances would be substantially different or his sense of security any less if he also thought it possible that the suspected colleague is wired for sound."

With each morning's newspaper reporting a new shocking revelation of government surveillance, it is not surprising to see anguished headlines over the outcome of the *White* case. (*The Washington Post* carried the story under the heading "Hight Court Eases Curb on Bugging.") Nor is it surprising in this atmosphere, to find, even a "conservative" like Justice Harlan concerned over the impact of imposing "on our citizens the risks of the electronic listener or observer without at least the protection of a warrant requirement." The nation has too long tolerated the supposedly enlightened self-restraint of its chosen guardians, and one instinctively feels that any and all external limitations on the government's power to surveil or to snoop are desirable.

Whether that proposition holds, however, for the "consensual transmittal" of a government informer deserves closer analysis. It is surely true that in a world without portable radio transmitters and portable recorders, discourse would be "freer." Guilty and innocent alike would know that their exact words were not subject to transcription, and that what they say might be forgotten or not subject to precise repetition even by a listener whose intent it is to report what he hears. And, in the last analysis, indiscreet words that are spoken carelessly or thoughtlessly may be denied by the person who has uttered them, and this option gives him greater freedom to speak his mind initially.

But, by the same token, the absence of recordings or radio transmittals leaves truth to the mercy of the parties to the conversation. If no third person hears or records the conversation between a government informer and a suspect, the words that passed between them can be determined only by evaluating their testimony – which is likely to conflict. Informers are, by and large, a bad lot, and courts recognize their unreliability by requiring juries to be instructed that an informer's testimony is "to be scrutinized with great care." They have every incentive to fabricate, because only if a case is successfully made against a suspect has the informer earned his keep. As an attorney who has represented criminal defendants, I would far sooner have an absolute rule under which every government informer would be *required* to be outfitted with a tape recorder or radio transmitting device than continue the present state of affairs under which a suspect may be found guilty because of an informer's uncorroborated version of one or more conversations.

A constitutional rule requiring a warrant before an informer may be electronically outfitted (such as that urged by the four dissenters in *White*) would, of course, reduce, rather than maximize, the instances in which such devices will be used. The narcotics agent who does not believe he has "probable cause" to obtain a monitoring warrant will send his informer, unequipped, to speak again with the suspect, and will rely on the informer's report to make his case or pursue the investigation along other lines. Even at the expense of some "free discourse," is society not better served if the agent is free to get independent corroboration of what the informer relates?

There is, in this entire process, room for judicial supervision and for the issuance of a warrant with Fourth Amendment standards. But the appropriate time is not when the informer is about to make a recording or a radio transmittal of a conversation. It is, rather, when the government makes the deliberate decision (as it did, for example, at some point in the *Hoffa* case) to use the informer on a mission which

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includes seemingly confidential conversations and private transactions with the suspect. The fears which Justices Harlan and Douglas express in their dissents in the *White* case are not really products of the electronic eavesdrop; the spontaneity, frivolity, impetuosity and defiance of our conversation would all be "smothered" if we thought that the person in whom we are confiding has been assigned by the authorities to surveil us and report our every deed and word. A far greater danger to our free society is presented by the prospect that friends and associates may be employed as government spies than by the possibility that an informer with whom we speak may be instantaneously transmitting our conversation to a nearby receiver.

A brief overview of a classic repressive society – that of the Soviet Union – proves the point. American visitors to Russia, and particularly those who seek out its oppressed minorities such as its Jewish population, bear witness to the totally demoralizing effect of ubiquitous informers. Soviet citizens have learned to live with wiretapping and even with the possibility of totally nonconsensual "bugging," but the distrust of one's neighbors, friends, associates and strangers whom one happens to encounter has totally smothered the "free discourse" which Justices Harlan and Douglas are anxious to protect.

And that is the dangerous direction in which our own law-enforcement agencies are headed. The FBI has, by now, successfully "infiltrated" most groups which Mr. Hoover believes present a threat – from the Communist Party and the Birch Society to the Black Panthers and the Jewish Defense League and, according to the recently disclosed FBI Pennsylvania files, even various peaceful but activist black and student groups. If we are honestly concerned with the preservation of privacy and free discourse, the recruitment and use of informers in these cases should be subject to judicial supervision, rather than to the unilateral judgment of Messrs. Mitchell, Hoover or their subordinates in the law-enforcement establishment. In White's case, it was when Harvey Jackson was first sent to engage in seemingly private discussions with the suspect that Agent DeFauw should have been required to lay out for a judge or magistrate his reason for believing that White was engaged in the narcotics traffic. By approving of the uncontrolled launching of the informer but balking at his use of a radio transmitter, Justices Douglas, Harlan, Brennan and Marshall have swallowed the pig and choked on its tail.

"The Disease Is the Psychology of the Cold War"

The Misuse of Power

by Henry Steele Commager

In the historic steel seizure case of 1952 Justice Jackson said that, "what is at stake is the equilibrium of our constitutional system." Now, after 20 years marked by repeated, and almost routine, invasions by the executive of the war-making powers assigned by the Constitution to Congress, we can see that more is at stake even than the constitutional principle of the separation of powers. At stake is the age-long effort of men to fix effective limits to government, the reconciliation of the claims of freedom and of security, the fateful issue of peace or war, an issue fateful not for the American people alone, nor alone for the stricken peoples of southeast Asia but for the entire world.

It is not sufficiently realized that the kind of military intervention we have witnessed in the past quarter century is, if not wholly unprecedented, clearly a departure from a long and deeply rooted tradition. Since the Neutrality Proclamation of 1793 that tradition has been one of nonintervention. Washington, and his cabinet, refused to intervene in the wars between France and her enemies even though the United States was far more deeply "committed" to come to the aid of France by the terms of the Treaty of Alliance of 1778, than she was to intervene in Vietnam by the terms of the SEATO Treaty. Notwithstanding almost universal sympathy for the peoples of Latin America who sought to throw off Spanish rule, we did not intervene militarily in that conflict. The ideas of "Manifest Destiny" and "Young America" dictated

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support to peoples everywhere struggling to throw off ancient tyrannies, but no President intervened militarily in the Greek struggle for independence from Turkey, the Italian uprisings against Austria, the Hungarian revolution of 1848 or other internal revolutions of that fateful year, Garibaldi's fight for Italian independence, the many Irish uprisings against Britain, in Ireland and even in Canada – close to home, that – or even *mirabile dictu*, the ten-year war of the Cubans against their Spanish overlords from 1868-78. Nor, in more modern times, did Presidents see fit to intervene on behalf of Jewish victims of pogroms, Turkish genocide against Armenians, Franco's overthrow of the Loyalist regime in Spain. Whether such abstention was always wise is a question we need not raise here. The point here is that in none of these situations did the Executive think it proper, or legal, to use his powers as Commander-in-Chief or as chief organ of foreign relations to commit the United States to military intervention in distant lands. With the sole exception of McKinley's unnecessary participation in the Boxer Expedition, that concept of executive powers belongs to the past quarter century. And if it should be asked why the United States should refrain from intervention in the internal struggles of other nations, even when her sympathies are deeply involved and her interests enlisted, it is perhaps sufficient to say that few of us would be prepared to endorse a principle that would have justified the intervention of Britain and France in the American Civil War – on behalf of the Confederacy of course – and that in international law you cannot really have it both ways.

The unlimited power of the Executive in foreign relations is no longer justified as an emergency power, but asserted to be a normal and almost routine exercise of executive authority. Lincoln pushed his authority to the outward limits of what was constitutionally permissible, but confessed, with characteristic humility that the emergency required him to do what he did, and asked Congress to give retroactive sanction to his acts. No such humility characterizes what we may call The Johnson-Nixon Theory of Executive Authority. Thus President Johnson asserted that he did not need the authority of the Tonkin Gulf Resolution to justify his bombardment of North Vietnam, for he already had that: thus President Nixon's assistant attorney general asserted that the President's authority to invade Cambodia "*must* be conceded by even those who read executive authority narrowly" (June 16, 1970). Why must it be? Certainly not because of the persuasive character of the arguments advanced by this distinguished counsel, for that character is wanting.

The new commitments are not, as generally in the past, *ad hoc* and even fortuitous, but calculated and ideological. Thus we do not drop bombs on Vietnam or Laos because "American blood has been shed on American soil" – Polk's excuse. Nor does the President respond to an imperative like the attack on Fort Sumter or even to U-boat warfare. Nor do recent Presidents presume to act – like President Truman – in response to a United Nations decision. Now Presidents act to "contain communism" or to protect "vital interests" 9000 miles away, or to fulfill "commitments" that are never made clear and that other nations (pledged to them just as solemnly) do not think require military fulfillment (e.g. the SEATO "commitments" that bind Britain, France, Pakistan, etc.). And they do so by programs that are by their very nature open-ended and tenacious. Thus Secretary Rusk's assertion in 1966 that "no would-be aggressor should suppose that the absence of a defense treaty, congressional declaration, or United States military presence, grants immunity to aggression"; the key words, for our purposes, are "absence of treaty" and "absence of congressional declaration." For this left only the alternative of the application of the executive power, unilaterally in the international arena, unilaterally in the constitutional arena too.

As power corrupts, the possession of great power encourages and even creates conditions in which it seems imperative to use it, and the concentration of that power vastly increases the risks of misuse. We had one example of that as early as 1846: what began as a simple vindication of a boundary line ended up as a war in which we tore Mexico in two.

Now the original assumption of our Constitution framers, that Presidents could not engage in war on their own, was greatly strengthened by the elementary fact that they could not if they wanted to, because there were no armies or navies with which to war. At the time of the ratification of the Constitution the United States Army consisted of 719 officers and men. Our armed forces increased to some 20,000 by 1840, to 28,000 on the eve of The Civil War and to 38,000 by 1890. Even in 1915, with the world locked in mortal combat, the armed forces of the United States were less than 175,000. With the worst will, there was little that Presidents could do with these forces. Now we have a wholly new situation. Not only do we keep some three million men under arms at all times – since 1951 the number has rarely fallen below that – but we have the greatest and most formidable armaments that any nation ever commanded.

The problem is complicated by a new terminology: the obsolescence of older terms that once had clear legal meaning, and the emergence of new terms, some of them (like "combat" meaning only ground troops, or "protective reaction") designed to deceive. Thus it is conceded that the President has authority to "repel" attacks, but the term has been drained of meaning. When we launch or support invasions of Cambodia and Laos not to defeat the enemy or to conquer territory but to enable us to withdraw, anything can be called a protective reaction. Besides, it has become a truism that all wars are defensive. Hitler claimed that

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his assaults on Denmark and Norway were "defensive."

Even the constitutional concept of a declaration of war has been drained of meaning by the presidential interpretation of the Tonkin Bay Resolution. Thus in congressional testimony in 1967, it was formally asserted that that resolution, together with the SEATO treaty, constituted a "functional declaration of war" – thus combining an original contribution to international law with repeal of an important provision of the Constitution.

There is a final consideration of importance: the growing role of the Executive Agreement – a method for bypassing the requirements of treaty-making. Unknown to article II of the Constitution, this emerged early as a useful method of disposing of routine business that did not rise to the dignity of a treaty. Until very recent times it was customarily used only for such routine business as tariff agreements, postal conventions, patent arrangements and so forth, the great majority of which were negotiated in pursuance of congressional authorization. As late as 1930 the United States concluded 25 treaties and only nine executive agreements. But in 1968 it concluded 16 treaties and 266 executive agreements. As of January 1, 1969 the US had a total of 909 treaties and 3973 executive agreements. And while the great majority of these were still concerned with routine matters, a substantial number dealt with problems that in the past had been considered proper subjects of the treaty-making power.

In 1940 Attorney General Jackson spelled out the permissible and impermissible limits of the use of executive agreements in foreign affairs: "The President's power over foreign relations, while delicate, plenary and exclusive, is not unlimited. Some negotiations involve commitments as to the future which would carry an obligation to exercise powers vested in the congress. Such presidential arrangements are customarily submitted for ratification . . . of the Senate before the future legislative power of the country is committed."

And he made a distinction between what was proper and what was improper relevant to the current scene: "The transaction now proposed represents only an exchange with no statutory requirement for the embodiment thereof in any treaty and *involving no promises or undertakings* by the United States that might raise the question of the propriety of incorporation in a treaty." (Hackworth V, 407) It is superfluous to point out that the use of executive agreements in such areas as joint use of air bases and joint defense of them in Spain, repudiates these carefully drawn limitations. For these, and similar agreements, do "carry promises and undertakings of future action." They *are* properly the subject for treaties.

Great questions of constitutional law are great not because they are complicated legal or technical questions, but because they embody issues of high policy, of public good, of morality. We should therefore consider the problem of the presidential authority to make war not merely in the light of constitutional precedents, but in the light of wisdom and justice.

In 1967 Under Secretary of State Nicholas Katzenbach asserted that "history has surely vindicated the wisdom of the flexibility of the conduct of our foreign affairs." Two years later Senator McGee stated that, "the decision-making process may be reduced by events to a single day, or even hours. On more than one occasion the time allotted by crisis incidents to those who must make the decisions has been less than the time it would take to assemble a quorum of the Congress." Is that true? Have Presidents been well advised, in the light of history, to bypass Congress in using American armed forces overseas? Would consultation with the Congress, would even second-thoughts and delay, have made a difference detrimental to national, or world, interests? Was it really of vital importance that General Jackson pursue the Seminoles and hang Arbuthnot and Ambrister? Would the fate of Texas have been different had Polk consulted the Congress before launching a war? Had he done so he might have escaped the name that has clung to him through history – "Polk the Mendacious." Was it essential to bombard Greytown on the Mosquito coast in 1854 – would we do that now? Grant himself learned what a mistake it was to send troops to the Dominican Republic in 1869, for a Senate, perhaps more strong minded than later Senates, refused to back him up or to allow him to go through with his plans for annexation. Was McKinley wise to commit 5000 troops to the invasion of China in 1900, and would we do this today in a comparable situation? Our commitment to the provisions of the constitution of the Organization of American States is perhaps sufficient commentary on the wisdom of our many military interventions in the Caribbean, and President Wilson's resort to an international conference – that rescued us from an ugly situation in Mexico – sufficient commentary on the wisdom of the Pershing expedition into Mexico. Would any President launch such an expedition today? In 1919 the hapless Jacob Abrams was sentenced to jail for 20 years for distributing leaflets criticizing the Archangel and Siberian expeditions: at the time he had only the consolation of being the occasion for one of the greatest of all Justice Holmes's opinions. If he were living now he might have the dubious consolation of knowing that almost everyone agrees with his argument. We have paid a high price in the long-range enmity of the Russians for that particular folly. A strong case can be made out for FDR's destroyer bases exchange and for extending protection to Greenland and Iceland, but is it conceivable that the Congress would have denied him the right to carry through these programs?

If we turn to the many examples of presidential war-

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making in the past 20 years we are, I submit, impressed by the fact that in almost every instance the Congress was actually in session and available for consultation: the Korean intervention, the landing of troops in Lebanon, the Bay of Pigs, the occupation of the Dominican Republic by President Johnson, and the successive series of forays into Vietnam, Cambodia and Laos.

There is one further observation that may be instructive. Almost every instance of the use of presidential force in the past has been against small, backward, and distraught peoples. Call the role of the victims of presidential application of force in the past: Spanish Florida, Honduras, Santo Domingo, Nicaragua, Panama, Haiti, Guatemala, a China torn by civil war, a Mexico plagued by civil war, a Russia and a Vietnam likewise plagued. It is a sobering fact that Presidents do not thus rush in with the weapons of war to bring Britain, France, Italy, Russia, or Japan to heel. Would we have bombarded Southampton to collect a debt? Would we have sent an expedition into Rome to protect Americans against a threat from a fascist government? Would we have precipitated a war with Britain over a boundary dispute in Maine? Would we land marines in France if customs collectors did not behave themselves? Would we bomb Russia for years if shots were fired – without any hits – at an American vessel? And does it comport with the honor and dignity of a great nation to indulge its Chief Executive in one standard of conduct for the strong and another for the weak?

This record does not justify Mr. Katzenbach's rosy view of the use of presidential authority, nor is there a single instance that bears out Senator McGee's assertion that "on more than one occasion the time allotted by crisis . . . has been less than the time it would take to assemble a quorum of the Congress."

"Reason may mislead us, experience must be our guide," said James Madison at the constitutional convention. By "reason" he meant theory or doctrine. Experience must indeed be our guide, and on the basis of a century-and-three-quarters of experience, confirmed by a quarter century of intensive modern experience, we can say with some confidence that: with the exception of the Civil War – a special case – and perhaps of the Korean War where the President acted in conformity to the decision of the UN Security Council – there are no instances in our history where the use of war-making powers by the Executive without authority of Congress was clearly and incontrovertibly required by the nature of the emergency that the nation faced. On the contrary, in almost every instance the long-run interests of the nation would have been better promoted by consultation and delay. We can also say that great principles of government are not to be decided on the basis of the *argumentum ad horrendum* – by conjuring up hypothetical dangers and insisting that the structure and operations of government must be based on the chance of these rather than on experience. It was to this kind of argument that Thomas Jefferson said, "Shake not your raw-head and bloody-bones at me."

Is it possible to mitigate the dangers of the misuse of the executive power in the war-making arena? I think it is, and venture a few recommendations.

What Justice Jackson said in the steel seizure case is relevant now as then. "Power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers." That power has been slipping from the hands of Congress. That Congress has the power to reverse this trend should be clear. It can pass the Javits Bill designed to limit the use of armed forces in the absence of a declaration of war or affirmative authority from the Congress; this together with the Fulbright resolution on national commitments and the Cooper-Church amendment might provide an effective curb on presidential war-making.

I suggest also that the Senate meet the argument of emergency, hypothetical as it is, by creating a permanent committee, a quorum of whose members would remain permanently in Washington, with authority to require that the President consult with the Senate or the Congress before taking any action that might involve the nation in armed conflict. Such a committee could be counted on to respond to a genuine emergency just as promptly as would the President, and counted on, too, to present the case for caution.

The Senate should create a standing committee to consult with the President on all executive agreements, and with authority to designate those of sufficient importance to require submission to the Senate as treaties.

And finally, the Congress should reinvigorate the power of the purse, that power which, as James Madison said, "may be regarded as the most complete and effectual weapon with which any Constitution can arm the immediate representatives of the people." It should use with more particularity than in the past the power to limit the place and the manner of the introduction of American arms and armed forces.

The problems that confront us cannot be solved by debates over precedents, by appeals to constitutional probity, or by confronting presidential power with congressional. These may mitigate but will not resolve our crisis. For all of these gestures address themselves to symptoms rather than to the fundamental disease. That disease is the psychology of the cold war, our obsession with power, our assumption that the great problems that glare upon us so hideously from every corner of the horizon can be solved by force.

Abuse of power by Presidents is a reflection, and perhaps a consequence, of abuse of power by the American people and nation. For two decades now we

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have misused our prodigious power. We misused our economic power, not least in associating economic with military assistance, and in imposing economic sanctions against nations who did not see eye to eye with us about trade with our "enemies." We misused our political power by trying to force neutrals onto our side in the cold war by bringing pressure on the nations of Latin America to support our shortsighted policy of excluding China from the United Nations – surely the most egregious blunder in the history of modern diplomacy. We misused our political power by planting the CIA in some 60 countries to carry on what we chose to regard as national defense but what was in the eyes of its victims the work of subversion. We misused our military power in forcing our weapons on scores of nations, maintaining military alliances like NATO and SEATO and imposing our will upon these where we were able. We misused our international power by flouting the sovereign rights of neighboring countries like Cuba and Guatemala and the Dominican Republic and violating our obligations under the OAS treaty and the United Nations. And we are even now engaged in a monstrous misuse of power in waging war on a distant people that does not accept our ideology, or our determination of its future. Is it any wonder that against this almost lurid background, Presidents misuse their power?

As we have greater power than any other nation, so we should display greater moderation in using it, greater humility in justifying it, and greater magnanimity in withholding it. In the long run the abuse of the executive power cannot be divorced from the abuse of national power. If we subvert world order and threaten world peace, we must inevitably subvert and threaten our own political institutions first. This we are in the process of doing.

Nixon vs. Auto Insurance Reform

"No-Fault" Default

by Simon Lazarus

On March 18, Secretary of Transportation John Volpe sat down before the television cameras in the Senate Commerce Committee hearing room to announce, reluctantly, the Administration's long-awaited conclusions from DOT's two-year, $2 million investigation of the nation's system for compensating victims of automobile accidents. In June and again in October of 1970, committee chairman Warren Magnuson had invited Volpe to make this announcement; on each occasion the invitation was declined. The reason for the delay became clear as soon as the text of his March 18 testimony was distributed: Volpe had very little to say. In principle, he conceded the need for reform. In practice, he was not prepared to offer any concrete reform. Thus as with its stands on oil import quotas, national health insurance, and consumer class actions, the Nixon Administration afforded another glimpse of what may be its most crippling disability in the 1972 quest for blue- and white-collar votes: whether by instinct or calculation, President Nixon consistently shrinks from popular economic reforms that threaten established patterns of power, whenever he believes that public perception of the issue is uninformed and diffuse.

In his testimony, Volpe agreed that nineteenth century negligence law has become a twentieth century Bleak House for auto accident victims. He agreed that we should discard the third party liability insurance mechanisms devised over the past 50 years to shore up that archaic doctrinal edifice. He gave the Administration's endorsement for the principle of "no-fault" insurance. This concept means that drivers would hold what would be in effect accident insurance policies; they would be entitled to compensation for injuries or damage suffered in an accident, whether or not the accident was caused by their negligence or anyone else's. In contrast, under the existing third-party, "fault" system, which prevailed in all states until Massachusetts adopted a limited no-fault plan in 1970, drivers carry liability insurance policies; these policies compensate other drivers, passengers or pedestrians injured by reason of the policyholder's negligence. The no-fault principle has been the watchword of reformers since 1965, when law professors Robert Kee-

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ton of Harvard and Jeffrey O'Connell of Northwestern published their no-fault-based proposal, "Basic Protection for the Traffic Victim." They argued that no-fault insurance would cut administrative costs for insurers and would assure that traffic victims would no longer have to endure the expense, delay and inequity of accident litigation before obtaining compensation. Volpe embraced these conclusions. But that was as far as he could go.

Against Volpe's own advice, the White House had decided merely to express moral support for efforts to introduce no-fault laws at the state level. This may or may not prove useful to state legislators now preparing for offensives against the armies of negligence lawyers, insurance agents and lobbyists for some mutual and direct-retail insurance companies, all of whom profit from the inefficiencies of the status quo.

The President again has left the field to his Democratic opponents, and they are prepared for the opportunity. In September 1970, Senator Philip Hart, who along with Senator Magnuson engineered the DOT study in 1968, introduced, with Magnuson's cosponsorship, legislation that would impose minimum federal no-fault standards on the states.

The dimensions of the problem to which the Hart-Magnuson proposals are addressed are staggering. According to the DOT study, auto accidents cost the nation approximately $15 billion in net economic losses each year. They are the third leading cause of death in the nation, and the single leading cause of death for persons under 35. These costs, and the expense of compensating and insuring against them, are at least as calamitous from the individual's vantage point, as they are for society as a whole. In introducing his insurance package Senator Hart noted that the cost of a standard liability policy for a 23-year-old married man living in the central section of the city is $587 in Los Angeles, $619 in Chicago, $706 in Philadelphia and $486 in Detroit. In New York and Boston the rates are higher, as of course they are everywhere, if the insured wants to purchase additional amounts of liability protection or any collision coverage. Premiums exceeding $1000 per year are no longer a rarity. Moreover, despite these extraordinary rates, that have approximately doubled in the past decade, premiums are not rising as fast as the underlying costs of accidents. In the same period, insurance company profits from underwriting casualty lines have dwindled and, finally, in the past three years, many companies have seen them disappear. As a result, insurers have panicked. Risks whom they have carried for decades, with above average and even spotless claims records, find their policies suddenly canceled or renewal refused. Then, dropped into the assigned risk pool they can obtain only minimal coverage at a price around 50 percent higher than they formerly paid.

Costly and agonizing as the process of getting and staying insured may be, however, few people can afford not to suffer through it. Given the meager state of mass transit facilities in most metropolitan areas, if a person can't drive, he often can't work.

Even after an insurance policy has been purchased, its value may turn out to be less than expected. Most of the consumer's premium dollars will not be used to compensate traffic victims at all; they will be squandered on administrative costs – the expense of maintaining insurance company bureaucracies and the expenses of lawsuits and lawyers. The New York State Insurance Department has estimated that 56 percent of insurance premiums are eaten up by these administrative costs; Senator Hart has put the figure at 60 percent. And once someone has suffered accident injuries that entitle him to compensation under a liability policy, he will find that litigation raises difficult barriers between legal entitlement and the actual power to collect. Lawsuits take time – largely because there are so many accident cases now before the courts. Defendants' insurance companies know that plaintiffs with large and painful losses can be worn down as they grow desperate. So it is not surprising that DOT statistics showed that the existing system favors the slightly damaged over the severely damaged, and the rich over the poor. In cases where economic losses are less than $500, the study relates, recovery averaged more than twice the amount of the loss; where losses exceeded $25,000, recovery averaged 30 percent of the loss. Victims earning more than $10,000, in a position to retain able counsel, recovered on the average 61 percent of their losses; victims earning less than $5,000 recovered only 38 percent.

Damning as these figures are, however, individual expense and injustice may not be the worst failings of the system. In the long run, society may be more severely harmed by the supine paralysis of insurance managements in the face of the exploding costs and shrinking benefits of the past decade. With the exception of Liberty Mutual, insurers traditionally took virtually no steps to bring the cost spiral under control – matching the militant lack of interest shown by Blue Cross and other private health insurers about controling upward-trending health care costs. Only very recently and timidly, has the auto insurance industry as a whole begun to attack the underlying causes of the problem, by instituting measures to elicit safety engineering in the design of automobiles and highways, or to strengthen the resolve of state and local governments to keep alcoholics and other demonstrably unsafe drivers off the road.

Congress can begin to move the nation toward relief of these ills, if it adopts measures along the lines of the insurance and safety reform proposals sponsored by Senators Hart and Magnuson. The details of their bills will be subjected to legitimate criticism during hearings

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scheduled for later in the spring, and modifications will be called for. But in their basic features, the bills would be a dramatic advance for the motoring public.

Senator Hart's no-fault insurance reform plan would not preempt altogether the states' current monopoly over insurance regulation; instead it would impose federal standards which state laws and state-regulated insurance companies would have to meet. These standards include the following basic requirements:

► All motor vehicles used in the United States would have to carry "no-fault," accident insurance policies that would compensate the driver and passengers for all "net economic losses" suffered in an accident.

► State laws imposing liability for negligent operation of motor vehicles would be abolished except in cases of "catastrophic harm," a term of art defined in the Act to include disfigurement, permanent 70 percent disability, and death.

► Compensation for income losses under the "net economic loss" standard would be limited to $1,000 per month or $30,000 in total.

► Compensation under such insurance plans would be "secondary," which means that the insured victim would only draw on his auto insurance policy after other applicable policies like private or public health insurance or workmen's compensation benefits had been exhausted.

In these broad outlines, the Hart plan resembles the three other major no-fault plans offered for consideration by state legislators before its introduction into the Senate in September 1970 – the Keeton-O'Connell "Basic Protection Plan," a scaled-down version of which is now Massachusetts law; the "New York" plan developed by reformist Insurance Superintendants Richard Stewart and Benjamin Schenck, which has received desultory support from Governor Rockefeller; and the plan offered by the American Insurance Association, which represents stock companies who deal with consumers through agents, and who believe that they could compete more effectively with direct-retailers like State Farm and Allstate if no-fault became the law of the land.

In theory, these proposed state legislative schemes are not inferior to the Hart-Magnuson proposal for federal standards. But in reality as the Nixon Administration was aware when it chose to take no action on its own, it will take years for no-fault laws to overcome the Maginot defenses against reform now in place in state capitals. And when reform does come through piecemeal state legislation, it will resemble the inadequate new Massachusetts law – which permits trial lawyers to continue bringing negligence actions for "pain and suffering" whenever medical expenses exceed $500, and which limits no-fault benefits to $2000.

If Congress does enact the Hart no-fault bill, its passage should bring one benefit that its proponents have not emphasized as much as they might. A no-fault system will increase the insurance industry's incentives, to "rate" cars – as well as drivers – according to the propensity of individual makes and models to prevent damage and injury in the event of a crash. Once insurance price differentials are established between, for example, a Chevelle and a Torino on this basis, a chain reaction could be triggered; as consumers turned away from the model most expensive to insure, the losing competitor would be driven to redesign its model. The result could be a more potent and durable system of pressures for safe vehicle design than is provided by the administrative controls of the Transportation Department's National Traffic Safety Administration. With such incentives built into the automobile market, it could be expected that the curve of accident costs would turn permanently downward, as would the curve of the number of highway deaths and injuries.

To speed this process of restructuring the incentives of automakers and insurers for interesting themselves in safe auto design, Senator Hart has introduced in conjunction with his no-fault insurance plan, a "Motor Vehicle Information Act." Also co-sponsored by Senator Magnuson, it would require automobile manufacturers, under DOT supervision, to crash-test all new models, then report the results to DOT which would then make them available to the insurance industry and to the public. Insurance companies could, and one hopes, will use the data collected under this law even under the contraints of the present system, in setting rates for optional collision insurance policies that protect the insured's own car against damage. But under a no-fault regime, they could also apply the data to fixing differential rates for all injuries and property damage that are currently covered by compulsory liability policies.

The only significant difficulty with this auto safety-auto insurance reform package is its failure to take account of the impact on auto accident compensation of a national health insurance system, if and when such a system becomes law. If auto insurance benefits are "secondary," as proposed by the Hart plan and the state reform plans as well, then insurance companies might lose much of their incentive to police the causes of accident costs in factors like vehicle and highway design. Some provision will therefore have to be made for perpetuating incentives to control the phenomena that increase accident costs.

In any event, Senators Hart and Magnuson will have to go to the people to beat back the Administration's opposition. Everyone who has watched his insurance premiums climb, had his policy canceled, or suffered through the hazards of accident litigation, will be gratified by their efforts, if news of a major legislative battle in Congress reaches him.

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Stanley Kauffmann on theater

All Over

(Martin Beck)

The Proposition

(Gramercy Arts)

We're still expected to take Edward Albee seriously. Broadway has one comedy writer, Neil Simon, and one serious writer. Now that Williams seems withered and Miller seems all munched out, Albee is the high-art jewel of the Big Time. If we had a healthy and fruitful theater, Albee might be tolerable as one among many, a formerly vital, now-attenuated mediocrity. As it is, the news that Albee has written a play makes Broadway throb, makes the Ph.D. candidates slaver, and makes the general audience – or what's left of it – gather round like the crowd outside a palace waiting for word that a son has been born to keep the royal line alive.

But ever since *Who's Afraid of Virginia Woolf?* – Albee's last good play – all we've been getting from the royal bedchamber are abortions: two plays and three adaptations that are all varyingly bad and two one-act plays that are Absurdist imitations. In fact, those two imitations, *Box* and *Mao*, were the best of this poor lot because at least they showed that Albee was listening to something besides his own purr.

With his new play, *All Over*, the purr begins again with the very first lines, the feeling that the author thinks he's very high-toned indeed. Some people are sitting in the huge bedroom of a dying man: his wife and his two (grown) children, his mistress, his best friend, a doctor and nurse. The wife asks, "Is he dead?" and his mistress says that the man always objected to the use of the verb "to be" with the word "dead" because he felt it a contradiction, that the question should really be, "Has he died?" At once we are in the presence of a playwright who wants us to know that he is not one of your run-of-the-mill theater dumbbells.

Throughout the play, Albee obtrudes this pygmy-mandarin style. When the daughter interrupts the mother, the latter says, "Do not deflect me." Later, the daughter, who is disliked, says, "*Non grata* has its compensations." And Albee may be the only dramatist now writing who uses "for" as a conjunction: "We cannot avoid them, for we are no longer private." That's class, folks.

But this classy tone isn't even consistent. There are gags. The nurse says of death, "It gets us where we live." In a quarrel the daughter says, "Fuck yourself," to the mistress. After an irrelevant line from someone else, the mistress says musingly, "I've often wondered just how one does that." (Whenever a rude word is used, it's couched in genteel archness.)

I've dwelt first on the language because it's a screen between us and the play. What lies behind the screen? An allegory, about dying and life. At one point Albee gives us oblique advice not to take his play as allegory, but this is just kittenish. No one has a name in this play: the program lists them as The Wife, The Daughter, etc., and no one is ever addressed by name. The setting is heavily symbolic. (Designed by Rouben Ter-Arutunian in the mode of a smart jeweler's shop-window.) Two huge cubes of black velour connected with chromium rods and in the space between them, the deathbed, hidden by a hospital screen. No cyclorama or backing; these units are set against the visible bare walls of the theater. (The absence of backing makes for very bad acoustics in the barny Martin Beck. The actors have either to strain or be inaudible; all of them are both at different times.)

Allegory is a risky form because it directs our attention so fiercely to content. Other forms can thrive on style, but allegory implies that the author had something so large to say that only by abstraction could he handle the magnitude of his message. Yet all that really happens in *All Over* is the exact opposite of allegorical intent: we learn specific details of the characters' backgrounds and relationships. They might as well have been called Ethel and Fred and Cora, the setting might as well have been realistic to the last tack. We learn that the wife has been married fifty years, that she dislikes her thirtyish son and daughter, that she had a brief affair with the friend; that he's a lawyer whose wife is in a mental hospital; that the mistress is noble – mistresses are always noble if they're present at deathbeds; that the old nurse had an affair with a man who was on the *Titanic*, and so on. The method is bastard Chekhov: everyone gets at least one aria. A few of the arias are modestly effective, though always self-conscious, full of balanced phrases and artful dying falls; but the play remains an anthology of set-pieces, generally tedious.

Not to belabor Albee with Chekhov, one difference between them is that none of Albee's material comes from or tends toward a central idea. Under the attitudinizing style and the unrevealing strokes of psychological candor, there is a vacuum. Just before the end, the wife says, "All we've done is think of ourselves," a thought that had struck me about an hour and a half earlier and that even then hadn't seemed specially enlightening about human nature in a sickroom. We listen to them think about themselves all evening, in largely predictable terms. (I longed for the dying husband to

(Continued on page 38)

Films Worth Seeing

Claire's Knee. French classicism adapted to film in Eric Rohmer's intelligent *pas de quatre* of oblique desire. Beatrice Romand is sixteen and superb.

The Confession. Costa Gavras deals ingeniously but seriously with the Czechoslovak purge trials of 1952.

Little Big Man. Humorous morality tale of a Western trapper who survives to 121, living alternately in white and Indian society. Directed by Arthur Penn, it's Dustin Hoffman's film.

Little Murders. Jules Feiffer's imperfect play adapted even less perfectly, but there are bursts of diamond-blue wit.

Ramparts of Clay. Life in a Tunisian village. Using (mostly) actual villagers, Jean-Louis Bertucelli has achieved dignity and grace.

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SK

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Between Soft Whimsy And the Chill

The Saddest Story — A Biography of Ford Madox Ford by Arthur Mizener

(World Publishing; $20.00)

There are ways and ways of authors addressing their editors, some worse than others. On the 14th of September, 1929, Ford Madox Ford at that time aged fifty-five wrote confidingly to his, "Books can be useful from so many points of view," adding "In my early days, for instance, I used to use the *Encyclopaedia Britannica* as a trouser-press and certainly the house that was without it was to be pitied. Books are very useful also for pulping; bibles and other works set over the heart will deflect bullets; works printed on thin india paper are admirable if you happen to run out of cigarette papers. . . . In fact, if you are ever without a book you are certain to want one in the end." Ford concluded his small tirade on a note of some dignity: "I was once accused of using slices of bacon, at breakfast, to mark my place in a book. That is untrue."

All this and more was partly an old magician's patter; he was trying to con or charm The Macaulay Company into expediting the galleys for his newest book (out of the lifetime grand total of 81). Publishers were for him commercial people to whom it was periodically necessary to point out the importance of books – and authors. In Ford's easy whimsy there is, however, one chilling remark: "Books are very useful also for pulping." In a letter to an English friend at about this time he wrote: "It is just that the public *will* not read me. Someone told me years ago that the Americans would never read me because they could not tell whether I was in earnest or not, whereas the English knew I was too damn in earnest to want to read me."

For an American who has read most of Ford, and enjoyed it, 40 years later it remains a nice question. Where and how was he in earnest? It is hard to think of another novelist of anything like Ford's caliber who managed to impose on reluctant publishers and a small public so many novels with improbable and hopelessly flimsy plots, from his early collaboration with Joseph Conrad on a story about a young Englishman who falls in love with a girl from the Fourth Dimension to his last fictional effort in the 1930s about a young American with the name of Walter Leroy who accidentally becomes the restored King of France. The queer thing is that all the while Ford continued to think of himself as making "constatations," of writing the moral history of his time. He said many times that the business of the novelist was to reflect, and not reflect on, the events of his day. Ford was fond of quoting, apparently with approval, Stendhal's remark that his style was based on the Code Napoleon and that a novel should be like a mirror moving down a road. Occasionally, very occasionally, as in *The Good Soldier* or *Parade's End* the two elements – what we might think of as the hard core of fact and the soft shell of temperament – would combine for Ford to produce a fiction that was very close to farce and at the same time was deadly serious. But elsewhere when the combining didn't happen – which was most of the time – we encounter the bales of remaindered books on such subjects as the god Apollo in Edwardian London or witchcraft on the Hudson or Doppelgangers in Connecticut, books that are intermittently entertaining if you happen to like Ford and infuriating if you don't, but otherwise largely forgettable.

In his 600-page, beautifully documented biography Arthur Mizener sees this continual failure of execution as essentially a moral failure. It explains his title, "The Saddest Story," which had originally been Ford's title for *The Good Soldier*. "Ford," Mizener writes, "was a gifted man unqualifiedly devoted to literature – an old man, as he liked to say, mad about writing. He never questioned that 'a writer committed himself at the beginning and had to remain committed through all the mischances of life. . . . He thought of it as something like a priest's vocation. . . . To write honestly and well was the most important thing in the world'; and throughout his life this dedicated man was frustrated by what Stella Bowen called an uncontrollable 'weakness of character.' It is not easy to imagine a sadder story than that."

Mizener tells Ford's story as it has not been told before in the dozen or more books that have been written about him by others, in poems by Ezra Pound, William Carlos Williams, E. E. Cummings and Robert Lowell, and in Ford's own books of reminiscence and fictionalized autobiography. Mizener never minces matters and he cites his evidence. We learn with some surprise that despite the wheeze, the gasp and the whispered mumble, whatever may have been wrong with Ford's lungs, he was not gassed in World War I; also that he seems never to have been in the front lines at all. We learn that Ford deceived himself in supposing that he was irresistibly attractive to women. Some women disliked him intensely and at least one, Jean Rhys, said she had found his hands "inexpert, clumsy at caresses." Ford was also self-deceived about the closeness of his friendship with men whom he greatly admired, such as Henry James and, most sadly, Conrad. We learn that he quite shamelessly wrote the blurbs for some of his own books and apparently even helped write the D. Litt. citation given him by Olivet College, which wrongly credits Ford with having "known war as a colonel in charge of two regiments in action." Mizener clears up confusion on a great number of points from the dating of *The Good Soldier* to Ford's various pseudonyms and name changes, his agoraphobia, dyspepsia, neurasthenia and gout, his German "citizenship" and complicated divorce proceedings, his homes in England, France and New York, his brief imprisonment in England, and, in much detail, his financial affairs which were always muddled and increasingly desperate.

Ford had not been born to his double-ended name when he came into this

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world in 1873, but acquired it following World War I. Until then, give or take a few Hermanns, Josephs and Leopolds, he remained simply Ford Madox Hueffer (pronounced neither Hweffer nor Hugh-fer but as it was when rhymed by Rossetti to go with "buffer"). Ford's father, Franz Hüffer, had come to England from Germany in the 1860s and had some reputation as an early supporter of Wagner and an authority on Provençal poetry. He died when his son was 15, at which time Ford and his mother went to live with her father, Ford Madox Brown, the Pre-Raphaelite painter. It was as Hueffer that Ford wrote his first book, a fairy tale, published when he was 19, and as Hueffer that he began his collaboration with Joseph Conrad in 1898, founded *The English Review* in 1908, where he published the very early work of D. H. Lawrence, Wyndham Lewis and Ezra Pound, and still as Hueffer that he wrote *The Good Soldier* and served during the war. But it was as Ford Madox Ford that he returned, not fully recovered from shell shock, to civilian life and letters, wrote his war tetralogy *Parade's End*, and founded and edited in France the *transatlantic review*. It was as Ford Madox Ford, the close friend of William Carlos Williams (another double-ender), that he made extended visits to this country in the late twenties and thirties, and as Ford Madox Ford that he died, in France, in 1939. The reason for the name change, Mizener thinks, was not so much a bow to postwar anti-German sentiment as that earlier he had been unable to secure the desired divorce from his first, and only, lawful wedded wife, Elsie Martindale, and that as a consequence he had suffered through a messy scandal, including court action, when Violet Hunt insisted on being called "Mrs. Ford Madox Hueffer." She lost. Evidently Ford wanted to make certain that nothing of the sort could ever happen again, and "Mrs. Ford Madox Ford" would be something else.

Mizener is particularly tactful, but forthright, in discussing Ford's relations with women, beginning with an elopement at age 20 and moving on to the seduction of his sister-in-law a few years later. Thereafter the number mounts up, so that by the thirties James Joyce could remark that Ford's "six wives" were one less than Earwicker's and write, "O Father O'Ford, you've a masterful way with you,/ Maid, wife and widow are wild to make hay with you,/ Blonde and brunette turn-about run away with you,/ You've such a way with you, Father O'Ford." Mizener is at pains to show that if Ford was indeed a romantic like Edward Ashburnham ("the good soldier"), he was not lecherous but rather a man comically and sadly in search of his soul mate. What the women saw in Ford is harder to determine, with his mouth perpetually agape, the sagging paunch, splayed feet, and lemon-colored moustache. Perhaps it was what Stella Bowen called "the tremendous attraction of his gorgeous mind." But here Mizener might not agree.

For the surprising thing is that despite his candor and extreme thoroughness in treating these and kindred matters – in general his persuasiveness on points of fact about Ford – I think, reluctantly, that Mizener lets him slip through his net. Too often, though the intellect is satisfied, the reader's imagination hangs fire and is not compelled. Where Mizener's Scott Fitzgerald in his earlier biography quite simply *is* Fitzgerald, where Ellmann's James Joyce, shocking though the portrait may be, *is* Joyce, this outrageously vain man can't be Ford – or not all of him, not the quintessential Ford. For the present reader at least, Ford's own Ford Madox Ford in, let's say, *It Was the Nightingale* remains more real than Mizener's. Ford knew that first impressions stick, and perhaps what has happened is that his fabrications have imposed themselves so forcefully that nothing can eradicate them. But there is probably more to it than that. "The Saddest Story" is not an entirely happy title and I think that the effort to make it good has misled Mizener, if only as to Ford's tone. Graham Greene was nearer the truth when he said (in a passage quoted by Mizener) that Ford "has a personality which calls both for respect and mockery. A fine writer with traces of a most engaging charlatan . . . his style swings like ribboned glasses. . . . [He] writes out of a kind of hilarious depression."

Such an insight is perhaps easier to come by than to maintain over the long haul. As a form biography has certain limitations and one of them is tempo. Ford was a soft-speaking and, by his own admission, slow-thinking man. In Mizener's book, long as it is, the pace takes its toll. Ford's life of many muddles, many books and many women is particularly distressing when summarized in rapid review instead of rendered in the slow motion of Ford's own reminiscences. A further problem, one of tact, results from Mizener's very regard for fairness and accuracy. It is hard to have justice and generosity both. The necessity of setting Ford right on matters of fact both great and small creates eventually, however little it may have been intended, the impression of a prolonged put-down and leads to the inevitable reaction. Also, the setting right is sometimes dubious. Is it so certain, for example, that Ford was never gassed – Mizener states this as a simple fact – when the only evidence offered, in a footnote, is that 50 years afterwards in a letter to Mizener a Captain Sugrue ("Ford's closest friend during his days in France") wrote that to the best of his knowledge Ford was never gassed? That is not much in the way of evidence. Probably it doesn't particularly matter whether he was gassed or not; something ruined his lungs. But it seems to me that here the desire to correct errors may

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have created one.

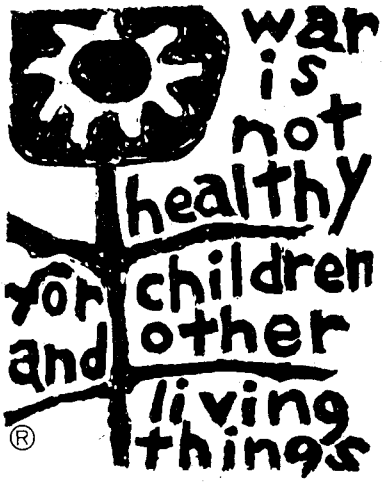
Another difficulty, inherent in the subject, is what to do with Ford's 81 books. They are enough to discourage any biographer, for they can't be ignored, and besides Mizener has some very good things to say about them, especially about *The Good Soldier*. He has taken, perhaps, the only course possible: with a few exceptions the critical discussions are relegated to an appendix. This has the obvious advantage of freeing the main body of the text for the events of Ford's life. But the books cannot be "demoted" in this fashion – even in a scholarly biography – without altering the life, for they were at the center of it. Rain or shine, in sickness and in health, with wife or with mistress, till death did them part Ford wrote at his books unceasingly. Usually, as soon as one book was finished, work on the next would begin. There were no vacations. Without our continually entering into that ongoing imaginative pursuit, the impression we carry away from Ford's life is that it was a sad story indeed. The often shabby life without the felt presence of the books leaves us with only one kind of fictionalizing, Ford's earnest efforts at self-advertisement. That there went along with this another, not so much imaginary as imaginative, heightening of reality tends to get passed over, even though Mizener is clearly sensitive to it. It is pushed to the back and nearly crowded out of sight by the nervous maneuverings of a rampant ego.

The sympathetic reader who thinks he has come to know Ford believes he can feel the steady pull of an extraordinary imagination, the attraction of his "gorgeous mind," but what this (or any) imagination really is is not easy to say. An attempt at definition will almost certainly fall short. Apparently Mizener regards this imaginative faculty, and rightly, as at least including the ability to juxtapose the most unlikely elements and hold them in suspension. A mild example might be Ford's testy letter to the editor of The Macaulay Company where, along with his desire to appear important and the sarcasm at the expense of those who underestimate books and authors, there emerges the queer composite image of an untidy, though gentlemanly, cigaret-smoking, baggy-pantsed, middle-aged man, dodging bullets with Bible held over heart and bacon in hand. This is fairly representative of the way Ford's imagination works, since such juxtapositions are not usually in the service so much of irony or what today is fashionably called The Absurd as of something softer and more old-fashioned, Ford's whimsy. But such a composite image represents only the first step. There is, in addition to the juxtapositions that have created the whimsical effect, in Ford's most vivid imagining a further juxtaposition of whimsy with something beyond it, the cold horrors of death, age and eventual defeat. These ultimate things Ford never forgot and at times could let us share, as in Sylvia Tietjens' memory of a white bulldog she once whipped sadistically while yearning for the always honorable husband who wouldn't, no matter what the provocation, touch her. It is a moment of recognition painful and macabre beyond the sadness of Mizener's (or perhaps it's Ford's) saddest story, although even here the whimsy is not quite absent: "A tired, silent beast . . . with a fat white behind. . . . Tired out. . . . You couldn't see its tail because it was turned down, the stump. . . . A great, silent beast. . . . The vet said it had been poisoned with red lead by burglars. . . . It's beastly to die of red lead. . . . It eats up the liver. . . . And you think they're getting better for a fortnight. And you're always cold. . . . There's a pleasure in lashing into a naked white beast. . . . It hung down its head. . . . A great head, room for a whole British encyclopaedia of misinformation, as Christopher used to put it. . . . And it went under a bush. . . . They found it dead there in the morning. . . . You can't imagine what it looked like, with its head over its shoulder, as it looked back and said: What a hope! to me." But Ford imagined, and he makes us see the old bulldog in a way we won't soon forget.

Ambrose Gordon, Jr.

Notes on Contributors

Roy Fisher, *former managing editor of the* Chicago Daily News, *is dean of the School of Journalism at the University of Missouri.* Ambrose Gordon *teaches English at the University of Texas,* James Walt *at the University of Maryland, and* John Seelye *at the University of Connecticut.* Ernest Kroll, *author of several volumes of verse, works for the State Department.*



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He Made It

Boss: Richard J. Daley of Chicago
by Mike Royko

(E. P. Dutton & Co.; $5.95)

Tears were streaming across Dick Daley's fat cheeks as he addressed the aging members of the Cook County board of Commissioners. He let them drip onto his neat blue suit and plunged on. Hurtling syntactical obstacles, he worked through a confession of his personal inadequacies, pleaded his good intentions, and sobbed a farewell to his audience.

A stranger walking into the oak-panelled board room that morning in 1948 might have mistaken the scene for the swan song of a man caught with his hand in the public till. But no, this was Daley leaving his obscure job as county comptroller to accept his first appointment to the political big time. Governor-elect Adlai Stevenson had made him State Director of Revenue.

Then a reporter new to the county building beat, my first impression of Daley was as a ham actor overplaying his part. But pretty soon the old political hacks in his audience began to dab at their eyes, and then everybody joined in a general tear-letting. You couldn't argue with the guy's success.

Daley went on from that day to become the nation's most powerful political boss, and last week the grateful citizens reelected him to an unprecedented fifth term. Now he has received yet another distinction. Mike Royko's book, while premature, either enshrines Daley for the ages or cremates him, depending upon the value structure of the reader.

Royko, a columnist for the *Chicago Daily News*, adds much to one's understanding of why urban politics is played as it is, why the incredible performance of Chicago police during the 1968 Democratic convention could have occurred, and the deficiencies of machine-rule in the modern city. He leaves unanswered whether the city can be ruled in any other way.

Daley himself emerges as a complex mixture of integrity and debasement, of wisdom and stupidity, of vision and blindness, of compassion and brutality. Unfortunately for the sake of society, the admirable qualities appear to be more nearly controlling in his personal life, the others in his public.

In a colorful but matter-of-fact style, Royko recounts how Richard Daley inherited an undisciplined and grafting city council, giving it discipline and reducing its opportunities for graft. Daley energized a stalled public works program, opening badly needed expressways on or before schedule and throwing up much-needed public buildings with abandon. Some of them even beautiful. Daley lighted the streets and did a better job of keeping them clean. He brought in a reform police superintendent and built a police force which, for awhile, was perhaps the best in the nation.

Royko's dead-panned anecdotes, however, show something of the cost at which these accomplishments were made. The city council, while no longer composed of the "grey wolves" of the past, is the rubber stamp of today, a travesty on the legislative process. The highways and buildings enriched politically-connected contractors and swelled party contributions, while giving Chicago the sharpest tax increases in the nation. The police force, depoliticized and modernized at such a cost of devotion and dollars, is the one which later was to stage the "police riots" of the 1968 convention, thus debasing the city before the eyes of the world.

Royko acknowledges Daley's intense personal loyalties to his family and to his long-time friends. They are symbolic of his personal integrity. But these loyalties have trapped him within the moral and intellectual perimeters of the uneducated, provincial, Bridgeport neighborhood of his childhood. One wonders what Daley would be like if he had been able to enjoy the close friendship and trust of some broad-minded, intelligent, and wise man who had experienced life on a broader scale.

An important piece of Daley's loyalty seems to have gone consistently to Robert Quinn, his childhood buddy who has an uncanny knack for making stupid mistakes. In one of his first acts as mayor, Daley jumped Quinn over several better qualified persons to make him fire commissioner, where he appears to hold an almost Rasputin-like influence over his boss. Royko blames Quinn in part for Daley's infamous "shoot to kill" order to police during the West Side riots that followed the death of Dr. Martin Luther King.

"It blew on the West Side," Royko writes, "and when Daley climbed in the helicopter with Fire Chief Quinn, scores of buildings were burning, several people had already been killed by police, dozens were wounded, and it was a devastated, looted bleeding place. . . .

"Quinn goaded him during the flight, pointing out looters below, urging that they be shot on sight, that anybody starting a fire be shot. His firemen were in danger, he said, especially his white firemen, since he had few of the other kind. Quinn pleaded that Daley crack down harder, that the police open up. Quinn, the man who turned on air raid sirens to celebrate baseball victories, the man who sent firemen jogging on expressways, the man who had been caught using firemen to work on his weekend farm, was now making life-and-death judgments.

"Daley called (police superintendent) Conlisk in and demanded to know why police had not been ordered to shoot arsonists and looters.

" 'Mr. Mayor, you issued no such orders,' Conlisk said.

"Daley snapped, 'You are the superintendent of police.'

"Daley later called a press conference and, in cold anger and a flat, hard voice said:

" 'I have conferred with the superintendent of police this morning and I gave him the following instructions: I said to him very emphatically and very definitely that an order be issued by him immediately and under his signature to shoot to kill any arsonist or anyone with a molotov cocktail in his hand because they're potential murderers, and to issue a police order to shoot to maim or cripple anyone looting any stores in our city. Above all, the crime of arson is to me the most hideous and worst crime of any and should be dealt with in this fashion.

" 'I was most disappointed to know that every policeman out on his beat

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was supposed to use his own discretion and this decision was his (Conlisk's). In my opinion, policemen should have had instructions to shoot arsonists and looters – arsonists to kill and looters to maim and detain.

"'I assumed the instructions were given, but the instructions to the police were to use their own judgment. I assumed any superintendent would issue instructions to shoot arsonists on sight and to maim the looters, but I found out this morning that this wasn't so, and therefore gave him specific instructions.

"'What about children,' somebody asked.

"'You wouldn't want to shoot them,' Daley said, 'but with MACE you could detain youngsters'."

Daley later modified this order, which violated the most basic premises of modern police tactics. But certainly his widely-reported statement set the tone of brutality which Chicago police orchestrated so fully during the 1968 convention. One wonders whether much of the course of the city's history and of Daley's own career might have been different if he had chosen to view the riot from a police helicopter, rather from the one of his ignorant fire chief buddy from Bridgeport.

Perhaps the most devastating criticism of Daley's nature, as it emerges from BOSS, relates to his myopic view of the city's racial problem. As one who as a boy in Bridgeport always viewed outsiders with suspicion, Daley today seems constitutionally incapable of understanding the plight of the black in Chicago. He has never, to my knowledge, taken the initiative toward opening opportunities for these millions, and his inertia is firmly built into his past. He sat idly by while his neighbors in all-white Bridgeport stoned a black couple out of a new home they had rented a few doors from his own. He cursed Dr. Martin Luther King's effort to dramatize the blacks' problems. When he moved on race relations, he moved only under duress. And he quickly lost any enthusiasm he had when the pressure came off.

Daley has offered his superintendent of schools little help toward solving the problem of the ghetto school. And within his own political organization he has ignored the most outrageous misrepresentation of blacks. Throughout the West Side – whether from unconcern or political timidity – he has tolerated the absentee rule of white, Mafia-connected committeemen over all-black wards. Royko describes it vividly in another paragraph dealing with Daley's helicopter ride with Fire Chief Quinn:

"Their helicopter flew over the Twenty-ninth Ward, a cesspool of black slums. The ward boss of the Twenty-ninth was Bernie Neistein, a Mafia front man who was white and rich and lived at the lake front high-rise. The black alderman took orders from Neistein. Then it flew over the black Twenty-fourth Ward. In the Twenty-fourth, the black alderman took orders from Carmen Fratto and Irwin Horwitz, both white. Horwitz, a rich real estate man, was a big money raiser for the Machine and always had a city job with a fine title. All the precinct captains in the Twenty-fourth were white, although the ward had been black for years. . . .

"Then it flew over the Twenty-seventh Ward, which is just about all black. The boss of the Twenth-seventh was Ed Quigley, who was white. Quigley made $28,000 a year running the city sewer system. Quigley's alderman was also white. Then it flew over the mostly black Twenty-eighth Ward, which was bossed by Tony Girolami, who was white, and had an alderman named Joe Jambrone, who was white. It also flew over the black neighborhoods that stuck into the edges of the First Ward, which was run by John D'Arco, who was white, and into the Twenty-fifth, which was run by Vito Marzullo who was white, and into the Twenty-sixth, which was run by Matthew Bieszczat, who was white.

"It flew over the black legislative districts that were represented in Springfield by Larry DiPrima and Louie Capuzi, by John Touhy and Pete Granata, by Vic Arrigo and Matt Ropa, by Larry Bartels and Bernie McDivitt, by Bob McPartlin and Frank Wolfe, by Bernie Neistein, Sam Romano and Zygmunt Sokolnicki, all of whom were white.

"Daley got off the helicopter and said, 'I never believed that it would happen here'."

Roy M. Fisher

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What So Proudly We Hail

Listening to America: A Traveler Rediscovers His Country by Bill Moyers

(Harper & Row; $7.95)

While he logged a 13,000-mile "inquiring reporter" trip across the United States last fall, Bill Moyers made a special point of stopping at Richmond, Indiana. In 1962 as Deputy Director of the Peace Corps he had visited the town to argue against Legionnaire charges that the Peace Corps was soft on Commies. He was cursed and hissed in Richmond's Legion Hall, and escaped a beating, as he thought, by getting out of town fast afterwards. In 1970 Richmond had changed. "The people don't seem as mean any more," a local reporter told him, crediting this "miracle" to an explosion in a gun shop that had taken 41 lives. Older Legionnaires had been dying off. Vietnam veterans generally steered clear of the Legion and one of the few who joined confessed to Moyers that he'd rather hunt Commies at home than in the jungles.

Complicated forces had been working changes in other towns Moyers visited. He found little revolutions he could approve of and a vast amount of hate, suspicion, and intolerance. Because he sees even the bright and idealistic kids using words as a cop-out – an evasion of the need to act – Moyers looked for his true revolutionaries among people over 30. There was Tom Gwilt, for instance. At 39 he was Indiana president of FASH (the Fraternal Organization of Steel Haulers), whose members operate their own trucks but are in danger of being squeezed off the road literally by the Teamsters Union. Last summer Gwilt's house was torn apart by bombs. Yet he goes on fighting the Teamsters, bleeding them gently but steadily by recruiting their people, and begging a so-far indifferent Congress, NLRB and Labor Department for elementary justice.

Gwilt and his aides had a motive for rapping with Moyers, since any publicity brought to shine on their grievances stood a chance to benefit FASH. But the Moyers notebook and tape recorder might have scared off shy people and panicked the self-possessed into blurting out nonsense. That hundreds of men and women talked to him – even talked sense by the yard – suggests he has other gifts besides a talent for editing. Something warm and personable and less egotistic than the "magnetic personality" of popular biography must have been working for him. To explain why so many strangers loosened up in front of a reporter, Moyers would say that loneliness is a signal trait – *the* signal trait – of Americans. But this explanation doesn't account for the touching quality of the stuff he recorded. He interviewed policemen, juvenile delinquents in a California lockup, country doctors, college presidents, a Chicano organizer and a south Texas mayor who'd been socially ostracized for defending the Chicanos, civil rights lawyers with twice Job's patience, politicians of every shade (including Orval Faubus), Chinese-Americans, jobless men "running scared," Seattle executives whose conversation had a Doomsday grimness and Groucho Marx (who felt his "slightly anarchistic" movies were defensible since the characters emerged from violence without hairdo or cowlick ruffled). Frustration was everywhere, circulating without prejudice up and down the social staircase. Hence perhaps the anguish and poignancy that flavored the stories people told Moyers.

The John Gees of Texas, for example, were a close-knit family until federal law put their sons in prison for refusing induction. Mrs. Gee, bewildered by our entrapment in Vietnam, wondered "why we can't go over there and do something about it or get out." Her husband, a lieutenant commander in World War II, nevertheless told Moy-

COMING
Peter Barnes on war crime books

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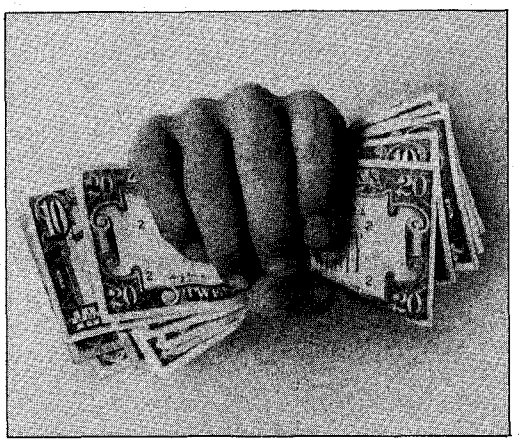

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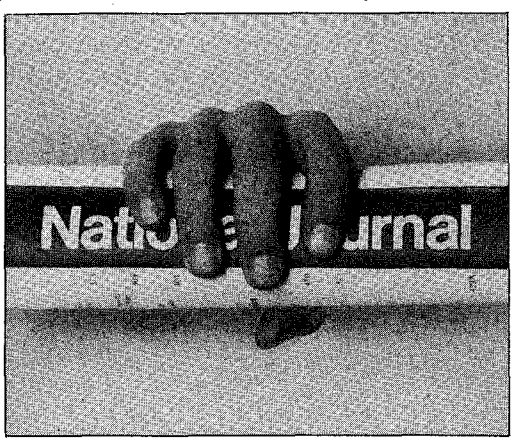

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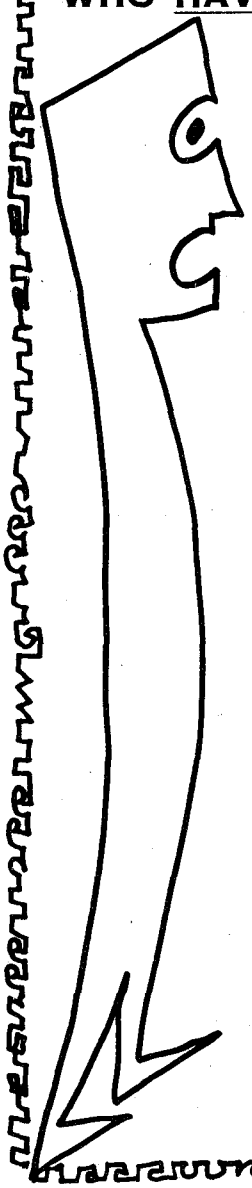
ers that "I wish the world had more criminals like our sons." This sympathy between the generations seemed old-fashioned if not obsolete by 1970. At a police precinct in San Francisco, Moyers learned that the city was a hive of runaway kids. "It's almost always the same problem," an officer remarked. "They just gave up, they lost faith in the family." Youth in Chinatown, critical of their parents for accepting the docile role the white man had imposed on them, were depressed because none of their people had gone into high-risk sports like car-racing, or come to the front as pro football heroes. Undoubtedly the search for a masculine image has had something to do with the soaring delinquency rate among California's Chinese-Americans.

Wherever he went Moyers found Americans struggling against the images formed of them. An octogenarian of Italian descent, outraged at the notion that his people were all part and parcel of a Mafian conspiracy, told Moyers of a son who became a war ace before crashing to his death in peacetime America. Parents in Lawrence, Kansas complained that white males had pinned the label "militant" on their teenage daughter because she was black – and tried to make the label stick by ganging up on her and her friends and forcing them to fight back. Moyers saw the same intolerance on a Kansas street as he watched hippies taunt the police after a series of fire bombings.

Moyers writes with a graceful pen and an enthusiasm for his subject. Earlier travelers like Dickens in his *American Notes*, R. L. Stevenson in *Across the Plains*, and Arnold Bennett in *Those United States* can't begin to match him in readability – at least on their left-handed, journalistic side. A smart-money publisher one of these days will recognize how much creativity entered into the vivid and evocative portraiture of *Listening to America*, and offer Moyers the mint for doing a novel about the Texan in the White House.

James Walt

LET US NOW CELEBRATE THE PEOPLE WHO HAVEN'T DIED IN VIETNAM



THOUSANDS OF AMERICANS (INCLUDING MAYBE YOU OR YOUR HUSBAND OR SON OR BROTHER) AND THOUSANDS OF VIETNAMESE WHOM OUR MILITARY LEADERS HAD ALREADY WRITTEN OFF AS "ACCEPTABLE CASUALTIES" ARE ALIVE TODAY BECAUSE OTHER AMERICANS (MOSTLY YOUNG) ORGANIZED AN OPEN RESISTANCE TO THE WAR WHICH HAS CHANGED PUBLIC OPINION AND FORCED THE GOVERNMENT TO BEGIN "WINDING DOWN" THE ASIAN SLAUGHTER . . . IN **THE RESISTANCE** ($6.95; PAPER $2.95). A NEW BOOK BY MICHAEL FERBER AND STAUGHTON LYND. YOU CAN NOW SHARE THE INSIDE STORY OF HOW (AND WHY) IT HAPPENED . . . YOU'LL SEE WHY THESE SAME NOW-SEASONED RESISTERS ALSO OFFER OUR BEST INSURANCE AGAINST REPRESSION IN THE WAKE OF OUR FIRST "LOST WAR" . . . AND THEN YOU'LL BE READY TO EXAMINE THE PHILOSOPHICAL BASIS OF POSITIVE RESISTANCE TO OFFICIAL RIGIDITY SO PROVOCATIVELY SET FORTH IN HERBERT READ'S VOLUME OF ESSAYS, **ANARCHY AND ORDER** ($7.50; PAPER $2.95) . . . TWO VERY APPROPRIATE CELEBRATIONS OF THE LIVES WHICH WEREN'T LOST IN VIETNAM.

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Keeping Cool With Cal

U.S. Journal
by Calvin Trillin

(E. P. Dutton & Co.; $6.50)

Eustice Tilley lives! The life blood of *The New Yorker* continues to flow out of the heartland, to undergo a species of pernicious anemia, and to turn about in Edwardian dress to regard with Boswellian hauteur the place from which it came. The most ardent Roman Catholics are supposed to be the converts from Protestantism, and the same must be said about New Yorkers. Calvin Trillin is surely a case in point.

Trillin's pieces for *The New Yorker*, here gathered in a volume, reflect the increasing social consciousness of that magazine, initiated by James Baldwin's "Letter From a Region in My Mind" (*The Fire Next Time*), unaccompanied however by a change in the drift of flotsam and jetsam of baubles and bangles which float through the accompanying ads. In Trillin's pieces, however, there is a noticeable lack of the pulpit passion which characterized Baldwin's long essay, for Trillin's mood is one of detachment, the I-am-a-Camera objectivity colored somewhat by ironic contrast which can be found also in the TV "white paper" reports. He seems to lack what Melville looked vainly for in Hawthorne, roast beef – rare.

Irony is the province of satire, generally, or polite conversation, and Trillin's essays share the qualities of both. His journalist's instincts lead

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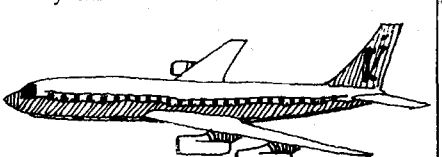

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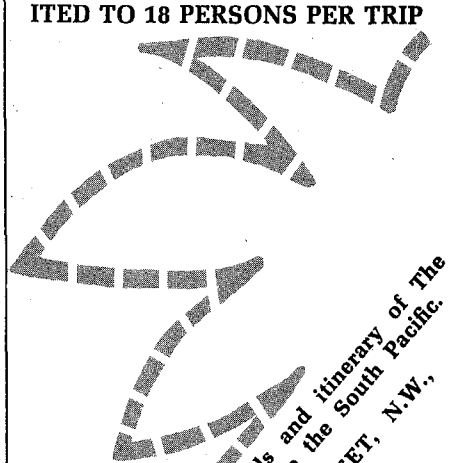

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him to the freaks and follies of American life, those grotesques which the tradition of Mark Twain, Sherwood Anderson, and Ernest Hemingway (two of whom were also journalists) has told us are symbolic of the quality of American life, the bizarrerie of life along Walt Whitman's "Road." But Trillin regards them through the monocle of Eustice Tilley, and his most sympathetic expression – for exploited poor whites and struggling black people of the South – scarcely rises above an alliterative "tch, tch!"

More typical is Trillin's cool amusement at the antics of Governor Lester Maddox, the serious pro-American performances of Paul Anderson, "The World's Strongest Man," the sno-mobile crazies of Minnesota, and other assorted freaks and eccentrics. They are all brought back to New York in the glass cages of Trillin's lucid prose to confirm the smart city folks in their intellectual and moral superiority to the rest of (ugh) America.

John Seelye

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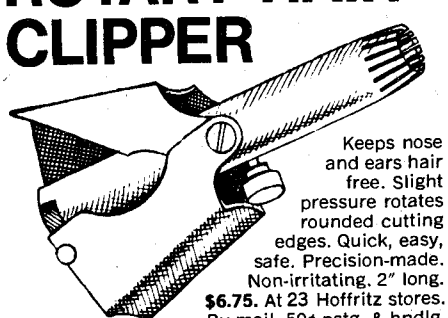

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Television

My Phony Neighbors and Yours

Robert Choate is not merely a professional breakfast food hater who smashes 20 cartons of Wheaties in his cyclotron every morning before orange juice (and then eats bacon and eggs); he is one of that growing body of reformer-entrepreneurs seeking social action in cases where institutions public and private prove themselves – and they sure do prove themselves – inept, inadequate, bored and corrupt. Choate thinks the basic solution to our society's potentially fatal sluggishness is to have a Third House of Congress, with "responsibility to initiate social need legislation"; but he is aware that it may take centuries to create such a House legally, so in the interim he is boosting a sort of separate but not equal citizens' House; a nonlegal entity with hq on TV and regular meetings on prime time. He has an elaborate scheme for selecting issues and representatives for the programs, and he imagines, with greater optimism than I can muster, that the new House would "balance the economic and power influence now dominating our democratic system."

His audience arrangements deserve particular mention here, though I doubt their effectiveness, because they envision the tube moved as it were into town hall. Living rooms across the land would be converted into public places where citizens, primed beforehand, would foregather and actually vote on legislation and other social action. Votes would be tabulated and shipped off to the Hill to scare the Idiots Up There.

This proposal, like many imagined by our community boosters for cable TV, would make tube citizens responsible. They would gather in front of the 11-incher, friendly-like and rational-seeming. They would not sit in lonely lumps scratching their athlete's feet. What a wonderful idea. But would it work? Are people like that? Commercial people answer with a disgusted no, and though high minders like me are supposed to hate commercial people I find their cynicism fetching. They may be right, alas, that the tube will forever be fit only for foot scratching and thumbsucking. At best the Choate scheme seems merely noble right now, as, with shoes on, the President, the Vice President and his tube-watching muscle-beach staff keep giving the tube a kick as if to say it's a dog: heel, dammit.

I have Robert Choate for a real neighbor, in Washington, and the White House team is a neighbor too (but unreal), and of course I also have Hugh Downs, Barbara Walters, Walter Cronkite, Dick Cavett, David Frost, Lucy and a few others (total cast not more than two dozen) as my (unreal) neighbors. Choate, who is real, imagines an enormous democratic mechanism producing at regular intervals a Jeffersonian assembly which in turn produces grand proposals for ending pollution, poverty and the like – he imagines, that is, a national scene with the tube as medium and mediator for two-hundred-million rational persons. Possible? I doubt it. The tube does reach out to the millions, it does extend the possibilities for community enormously, it does mish and mash the great and small. But it is also a great deceiver, it brings into my room as neighbors those who are not my neighbors, whose presence is a delusion; it even encourages my delusion-neighbors to *work* at deluding me. And they do.

Yes, I am the mythical, allegorical, democratic object, at home with my shoes off. Nixon and Agnew watching the tube imagine me watching the tube and they think, my god, what a bad education he is getting, let us speak to

Beer Joint Alley

Not that times
Change for the
Boughten act,
But places
Do. Now a
Lone drunk in
Shirtsleeves wea
Up the street
In and out
Of the bars,
By neon
Guided, quite
Uncalled to
From upper
Windows, dark,
Dark as an
Eye put out.

ERNEST KROLL

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teacher. And in thinking thus simplistically about me and their relationship with me they have me taped; so they do things with and to me that they wouldn't dream of if they walked across to the Capitol and the assembled stiff-necks there. They know that the *quick* way is call up CBS, dammit.

I *am* at home with my shoes off, and I *am* confused. I *do*, faced with the reality-confusions bred by the tube, need help. And I am also probably unwilling to receive help from any big old rational assembly, as Choate recommends that I do. I will be extremely resistant to high-mindedness generally. I don't see, however, that these sad facts about me make me naturally and rightly the charge of my phoney neighbors. When I get my shoes back on and look at them, from the President on down to the Anacin people, I see no reason at all why any of them should receive priorities in the tutelage of my off-shoes self. Some of them may be good men and true, some certainly are not; but all of them are so blastedly committed to selling their own products to me that they are untrustworthy pedagogues.

But then who, you may ask, should save me? Or better, should anyone undertake to do so? Is not a democratic man, a man of theoretical dignity and brains, committed to lugging his own poor soul off to the sugar tit?

The tube unfortunately presents the democratic man with problems he has not yet faced. With his shoes off in the tube's grasp he is not the free man our heritage would have him be; he is not, scratch-scratch, a uniformly reliable decision-maker; he is, I regret to report, a crittur Pavlov would recognize – and he is surrounded by Pavlovians. If therefore he is to be saved he must not be expected to do so all by himself. That is the sad truth of our un-Jeffersonian time. Controls are needed against those who would control him – and the controls must be in the hands of those who have a different notion of pedagogy from my phony neighbors.

Should the controllers be in the nature of an arbitration board, as with strikes? – no teeth. Should they be merely the members of a gutsy FCC? – impossible at the moment. Until a new Administration arrives – and perhaps not then – we may have to scrape along in the hands of petulance and profit. And yet the form and spirit of tube control are discussable items now. Beginnings are being made.

A modest one recently announced by Representative Morris Udall would reduce the time I put in watching professional baseball, football and basketball, and that's fine – I don't need them forever, and I don't see why TV should ruin sports, enrich the Mafia and other villains, and swallow my weekend in the abstract interest of (whose) freedom. Also, Nicholas Johnson and others would move in with an iron foot on the distribution of prime time – and that's fine too. Save me from myself by the half hour; don't let me succumb to the deadly repetition I love; disappoint me, force not the good but the different down my throat.

Negative measures? Yes, these are what we need to make a start at controlling the dross of TV – the advertising, the prime-time soporifica, even the erratic but sometimes ubiquitous prime-time melodiousness of the politicoes. No amount of UHF variety on the tube will keep me in my shoes-off state from the dross, so long as it is – and it *always* is – there on the regular channels. It is the essence of brainwash, and it can be combatted only by reducing quantitatively its presence.

Democratic man approaches a state of helplessness before the onslaught of repetitive messages and the sweet nothings of con men. Without protection from them he may one morning throw his shoes away and never get to no democratic assembly nohow.

Sedulus

A Communication

John Holt has written that "Someone may suggest soon that the easiest and surest way to solve the problems of our schools may be to give all children a pre-frontal lobotomy at birth, or to plant some behavior-controlling electrodes in their heads. We seem to be dangerously close to such horrors." Harlan Vinnedge, in his "Drugs for Children" (*New Republic*, March 13, 1971), seems not only to disregard that danger, but to suggest that private citizens and public officials have no business exposing to public scrutiny the use of behavior modification drugs for school children.

But we must raise questions. Behavior modification drugs are dangerous. No one understands how or by what mechanisms amphetamines work, their long-term effects are unknown, they may be addictive and produce other harmful side effects. The drugs are properly used only on children with minimal brain dysfunction, and according to pediatric neurologists most physicians are not qualified to make this diagnosis. In the Omaha program there is little evidence that distinctions are being made between children who actually have minimal brain dysfunction and those who are simply energetic, "acting-out" children, or children who are reacting to an oppressive or unstimulating classroom situation.

Despite the legitimacy of the questions raised by private citizens and public officials, it has been impossible to get information. This in itself raises serious questions about the Omaha program. For example, no one is able to obtain accurate data on the extent of the use of drugs. Parents won't talk because of fears of pressure from school teachers or administrators. The Omaha schools have been asked but have replied that they do not keep these records. The Omaha-Douglas County Medical Society was asked to survey the situation and referred the matter to a committee from which nothing has been heard to date. Full information on the quantity of drugs dispensed by pharmacies is not available. (Even if it were, one would have to add the free samples distributed by drug companies.) Those Omaha physicians participating in STAAR (an organization that deals with learning disabilities and that favors the use of

The Indochina Hemorrhage

A collection of articles on the war in Indochina, reprinted from *The New Republic*, is now available as a 92-page booklet. Included are articles by Hans J. Morgenthau, Philip Balboni, Townsend Hoopes, Stanley Hoffmann, Henry Steele Commager and the editors of this journal.

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drugs) will not disclose the number of children for whom they prescribe amphetamines.

Professionals who oppose the program won't say so publicly. With a few exceptions, they feel bound by the unspoken rule that one physician should not openly criticize another. Omaha citizens who are raising the questions are not opposed to the proper use of these drugs, that is, for a child with minimal brain dysfunction as diagnosed by a pediatric neurologist (with the concurrence of the family physician who is familiar with the child's history, and who provides a check on a research- or single-treatment-oriented specialist). The opposition in Omaha is to the *misuse* of amphetamine drugs in an experimental program treating hyperactive children and to the impenetrable secrecy which surrounds the entire operation.

There is no written policy in Omaha schools outlining procedures for referral of children with behavior problems. Certain questionable practices have arisen as a result. There is no rule governing when or with whose permission children are to be given psychological tests. "Problem children" have been given special psychological tests without parental knowledge or consent. Then when parents raise questions, the Psychological Services Department usually refuses to discuss with them the kinds of tests that were given and the results. The school pressures parents and physicians to agree to the use of amphetamines. One parent reported: "The pediatrician didn't want to give him medication, but . . . I had to have it to keep David in school. I . . . had to get the medication or else." (*Omaha World Herald*, July 4, 1970)

Most important, children are referred to selected physicians. An unusually high proportion of Omaha school children being given drugs for behavior modification are under the care of STAAR physicians who are not neurologists. When family pediatricians refuse to prescribe drugs, school officials "suggest" that the child be taken to one of the STAAR physicians. Thus the schools are diagnosing the children and, by selective referrals are determining the treatment they will receive. No effort is made to determine whether the teacher's attitudes or emotions might have had something to do with the student's problem. Nor does the Psychological Services Department furnish any professional resource personnel to assist teachers in changing attitudes or practices so as to improve the psychological atmosphere of the classroom.

All this Mr. Vinnedge failed to see. Further, there are blatant errors of fact in his article. For instance, he strongly implies that without the drug issue Ernest Chambers would not have won election as state senator from Omaha's 11th District. Vinnedge observes that the behavior modification drug controversy first arose on June 15. He fails to report that on May 13, Chambers had easily won the primary race for this nonpartisan office and was practically assured of victory in the November election when the candidate who was eliminated in the primary immediately threw his support to Chambers. Chambers distributed printed campaign material stating the issues to which he would give attention if elected. The behavior modification drug program was not even listed among them. Also, Chamber's opponent in November lost the confidence of many conservative and elderly blacks when, on June 16, he made a public declaration to the effect that if whites are in power it must be because God willed it so.

Finally, Chambers did very little campaigning. He did not need an "election issue." He is a nationally known black activist who was the outstanding personality in the documentary film "A Time for Burning" (Lutheran Film Associates, 1966). He has been featured in national magazines including *Ebony, Jet, Newsweek*, and *Life*. He has given much attention to reform of the legal and educational systems as they affect blacks. The amphetamine issue is only one of many that he has helped to bring to the attention of the community. For Vinnedge to say that "Chambers' textbook campaign of innuendo won him the election . . ." is a gross fabrication.

Yes, Pandora's box is still open in Omaha, but not to the detriment of the children, as Vinnedge suggests. Hopefully, concerned citizens and public officials will continue to press for accurate information. And, hopefully, reasonable safeguards will be developed which will allow the proper use of amphetamines, but will protect our society from unchecked use of these behavior-controlling drugs.

John F. Else
Alvin L. Ross
Omaha, Neb.

JOHN F. ELSE *is an instructor at the University of Nebraska at Omaha and* ALVIN L. ROSS *is an attorney in that city.*

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Kauffmann, *from page 24*

shout behind the screen: "Will you all kindly shut up and let me die in peace?" And why, even in an allegory, doesn't the doctor object to all this chatter in a dying man's chamber?) The wife finally confesses that she loves no one but her husband, the daughter confesses that she knows no one likes her and she doesn't like herself much, the mistress faces loneliness; with these and similarly unsurprising revelations about all these uninteresting characters, the play ends.

Now it's not enough to say that all this is not enough: it's worse. The trumped-up revelations, the unproductive confrontations, retroactively reveal Albee's real bankruptcy, that he knew he had nothing to say *before he started*. There is no hint in this play that Albee was genuinely on fire to say something and that he misconstrued his own depth. Rather, the impression is that he thought of the mechanism – the death-chamber symbolism – and simply began, assuming that the magic of the mechanism and the weight of his reputation would supply Art. A playwright must write, I suppose he thought, and this structure would give him the chance to show again his velvet way with words and his penchant for symbols that are provocative so long as you don't question them. In my view this was the genesis of *Tiny Alice*, an even more complicated piece of symbolic gymnastics and the most ludicrously overexplicated play of our time. *All Over* is somewhat simpler but is just another somewhat arrogant display piece, puffed up with sophomoric diction, a desperate grab at something to keep its now-vacant author busy. Death as

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a catalyst on the lives of survivors is always a promising idea. The contemplation of death, as Tarleton says in Shaw's *Misalliance*, is "a delightful subject." But Albee's play is like its setting: chic upholstery stuck in the middle of a bare stage.

John Gielgud has directed with Chekhov in his ears, which helps, and with an eye searching for pictures. The characters move from one set of poses to another, as if there were someone out front clicking a camera every thirty seconds. It's hard to blame Gielgud for this, however, because there are so few dynamic currents on which to base his direction; pictures were what he was left with. He confirms this by adding a "picture curtain": that nineteenth-century device in which the final curtain rises again, not on the curtain calls but on the actors still in tableau of the play's last moment. Then it descends, and *then* we have the curtain calls.

Jessica Tandy is the wife, a competent actress suffering as she has done all her life from the insufficiencies of her voice. Colleen Dewhurst, the mistress, is a strong stage figure, but *her* voice gets hoarser and less useful all the time. George Voskovec, the friend is still not comfortable in English after playing here some twenty-five years; one feels his insecurity of inflection. Madeleine Sherwood and Betty Field are commonplace as the daughter and nurse, James Ray is vague as the vague son. As the 86-year-old doctor, Neil Fitzgerald is charming.

The Proposition is a company of satirical improvisers who have played for three years in Boston and are now in New York. They ask the audience to supply subjects – current themes, fairy tales, etc. – then extemporize material on them. I've seen them twice and laughed even more the second time. Their spoken skits are generally less successful than their musical spoofs – pop styles, musical comedy, opera – with the deft Danny Troob at the piano. The tone is impertinent, the spirits are high, and there's the extra tingle of risk not present in most revues. (How are they going to handle *this* one? we wonder. And we get a special kick out of a neatly concocted rhyme or plot switch.) You can't see quite the show that anyone saw before you, which is part of the fun and imaginative games.

The director (trainer?) is Allan Albert. Again declaring interests, I note that he, like several of the people connected with *Subject to Fits* (*NR*, March 6), was in a course of mine at Yale last year. I'm beginning to feel a little like Mr. Chips, and I love it.

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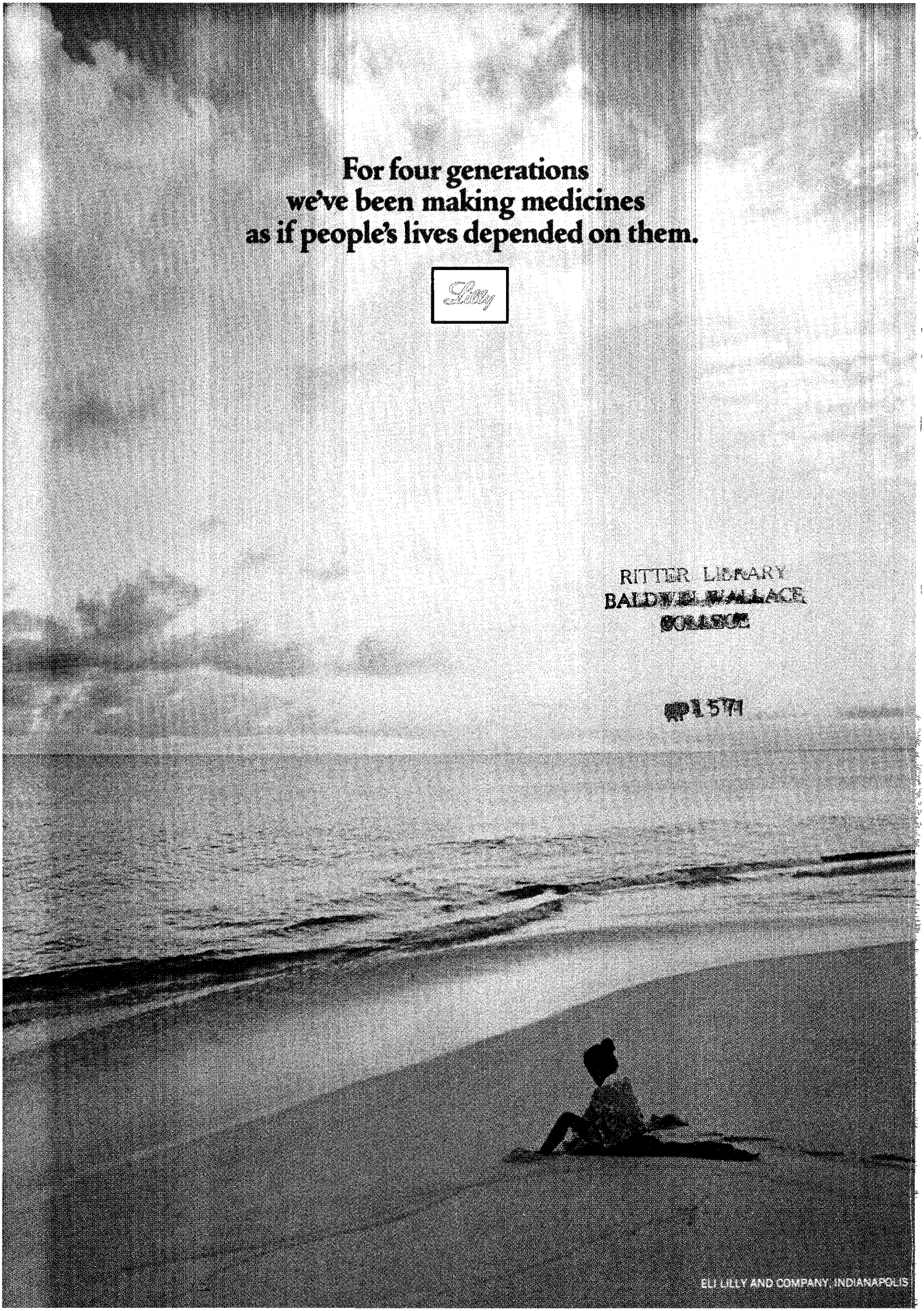

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